THE

TRIAL OF THE JUDGMENT.

A

REVIEW OF THE ANARCHIST CASE.

BY GEN. M. M. TRUMBULL.

CHICAGO:
HEALTH AND HOME PUBLISHING CO.
1888.

Copyright, 1888,
By M. M. TRUMBULL.

All Rights Reserved.

PREFACE.

The pamphlet entitled "WAS IT A FAIR TRIAL," published just before the execution of the so-called anarchists, had such a wide circulation, and excited so much interest, that after the execution a strong desire was expressed by many persons that the pamphlet be enlarged into a review of the whole case as a test of American democracy.

It was desired that as the former pamphlet was written under the conditions prevailing before the execution, in the shape of an appeal to the governor for clemency, this one should be written under the conditions that prevailed after the execution in the shape of an appeal to the bar and people of Illinois for a reversal of the judgment and a restoration of the law.

The awful tragedy in the Haymarket was "worked" in such an ingenious way that the American people were thrown into a state of terror as if their government and their constitution were made of brittle glass. Taking advantage of this panic, the law was strangled in the courts that the accused anarchists might be strangled on the gallows. Working the people into a nervous state of mind, authority asserted itself like a king, and, borrowing from Lord Salisbury his "coercion" policy for Ireland, adopted it in Chicago, with this difference, that whereas the prime minister of England did not dare to enforce his policy without special warrant of the legislature, his imitators in Chicago enforced it without waiting for any legal permission at all.

In the trial of the anarchists a great wrong was done, not only to them and their families, but to all the people, whose lives, property and liberties can never be safe where the guarantees of the constitution are disregarded by the courts and the right of trial by a fair and impartial jury is denied. That the wrong done in the anarchist trial and judgment may be righted as far as possible, and that a like wrong may never again be done in the United States, this review is written.

M. M TRUMBULL.

Chicago, February, 1888.

THE TRIAL OF THE JUDGMENT.

On the 11th of November, 1887, four men were hanged in Chicago under the forms of law. They were tried by a jury and judgment of death was pronounced against them. The judgment was affirmed by the Supreme Court of Illinois and ratified by the governor. The public conscience is becoming uneasy under the suspicion that this was a political trial and a class execution, like some historic attainders which have left the imprint of bloody fingers upon the jurisprudence of England. It is averred by friends and believed by many enemies of the condemned men that their trial was unfair, the rulings of the courts illegal, and the sentence unjust. The trial of the Chicago anarchists is ended, but the trial of the judgment under which they suffered is only just begun. When reason and courage return to the people of Illinois, that judgment will be reversed, and the terrified magistrates who pronounced it and sustained it will be sentenced to an immortality of derision. It will be reversed as emphatically as the Dred Scott judgment was reversed; as thousands of other barbarous judgments have been reversed; as righteousness in due time shall reverse a thousand more. The march of civilization is over the judgments of supreme courts, and on the ruins of those judgments humanity lays the foundation for better laws.

The indictment against the judgment in the anarchist case contains two counts: one alleges that the victims of the judgment were innocent of the crime for which they were condemned, and the other alleges that their trial was unfair. The "Revenge" circular of May 4th has been answered by another "Revenge" circular in the shape of a judicial decree. The law of the land has been driven from the court house by the law of retaliation. The issue is not to be evaded by the plea that if the defendants were not guilty of murder they were guilty of something else. They were tried for murder, they were condemned for murder, and for

murder they were put to death! There are state trials famous in history, not because of their dramatic character and surroundings, nor because of the magnitude of the crimes involved, but because in those trials the law itself was twisted out of moral symmetry to gratify public revenge; justice was violated in her own temple and the fountain of liberty polluted. This case will be memorable also, not for the enormity of the crime charged, but for the enormity of the trial. The methods of procedure practiced and allowed by the judges of King James's time—methods now obsolete in England—have been revived in Illinois. Trial by jury has been perverted, even to the shedding of innocent blood, and all the securities of liberty have been put in jeopardy.

Conspicuous among the accused in this indictment stands the governor of Illinois. Appalled by the clamor of an angry populace, he executed vengeance with merciless decision. Panic-stricken by the noise outside, he shut his ears to the heart-broken prayers of children, mothers, and wives pleading at his knees for father, husband, son. He did this, although he knew that the frightened courts, even when speaking the death sentence, had confessed that errors prevailed in the trial. He did this, when as a lawyer he knew that there were other errors in the trial which the courts did not confess. He had an opportunity to show the highest quality of magnanimous power, and at the same time save the jurisprudence of Illinois from the stigma which must disfigure it for centuries to come. He lacked greatness of spirit, and his opportunity passed away. Had he been morally tall enough to reach the knees of Abraham Lincoln, he would have saved the state of Illinois from "the deep damnation of this taking off."

It has been contended in excuse for the governor that his authority over a judicial sentence is the prerogative of mercy alone, and that all questions of guilt or innocence, of justice or injustice, have been settled by the decision of the Supreme Court. This is a mistake. The power to pardon is frequently judicial, although the form of its exercise is not. It is true that the governor does not reverse or modify the judgments of the courts except in the form of clemency, yet the power to pardon is continually exercised as a judicial function vested in the chief magistrate. It has been so from the earliest times in England, and there, as here, under the form of mercy, errors of the courts are constantly cor-

rected by the pardoning power. The case of John Frost will serve as an example:

In 1839 Frost, Williams and Jones were tried in Wales for high treason. They had levied war against the government. They had led a mob of men to attack the jail at Monmouth, and they had engaged in battle with the police and soldiers. As a consequence of this mad enterprise fifty men were killed. There was no question about the guilt of the accused, and they were duly sentenced to death. After the trial was over it was claimed by their counsel that the list of witnesses for the crown had not been handed to the prisoners the legal number of days before the trial. This point was assigned for error, and it was referred to the fifteen judges sitting in Westminster Hall. Their answer was:

First. A majority of the judges in the proportion of nine to six are of opinion that the delivery of the list of witnesses was not a good delivery in point of law.

But, secondly. A majority of the judges in the proportion of nine to six are of opinion that the objection to the delivery of the list of witnesses was not taken in due time.

So the judgment was affirmed; but the government said that it would never do to hang three men, however guilty, who at their trial were deprived of any right to which they were entitled by the law, although the prisoners themselves had waived it by not asking for it. The judges having confessed that there was error in the trial, it would be a scandal that the men should suffer death. The sentence was, therefore, commuted to transportation for life. In the Frost case the commutation of the sentence was a judicial act exercised in the form of clemency under the pardoning power.

ERRORS IN THE RECORD.

In the present case the Supreme Court of Illinois confesses errors in the record, and, as in the Frost case, decides as to some of them that objection was not made in time. For instance, in the matter of the Most letter, the language of the court is this:

The objection that the letter was obtained from the defendant by an unlawful seizure is made for the first time in this court. It was not made on the trial in the court below.

As a technical rule of practice this may be correct, and perhaps binding on the Supreme Court, but it was not binding on the

governor, as the like decision in Frost's case was not binding on the crown. Technicalities in favor of life should be liberally allowed, and this is a maxim of the law. Technicalities in favor of death have a ghastly look; they are altogether shocking, and they are odious in the law.

In the deepest tragedy there are scenes of comedy. So in this. Scarcely had the Supreme Court handed the seven men to the lord high executioner when up steps Mr. Justice Mulkey, a member of the court, and, with comic paradox, passes mortal judgment upon the decision itself. The stab he gives it is fatal. Here is what he says:

> It is not my intention to offer a separate opinion, as I should have done. I desire to avail myself of this occasion to say that, while I concur in the conclusions reached, and also in the general views as entered in the opinion filed, I do not wish to be understood as holding that the record is free from error, for I do not think it is.

Which is to say, that Mr. Justice Mulkey agrees to the *conclusions*, but not to the premises on which they are founded. He agrees to the *general* views, but not to the special reasons. He is neither ethical nor logical, for if the premises are bad the conclusion must be at least dubious. If the special reasons are unsound the general views resulting from them cannot sanctify the hanging of men. Judge Mulkey's concurrence in death for the anarchists on general principles is but a judicial echo of the angry clamor of the streets. "They didn't have a fair show," said the president of a vigilance committee, in excuse for the hanging of a gang of bad characters, "but most of 'em was guilty." The apology was weak.

Judge Mulkey thinks that he can sanction the decision, and at the same time sustain his reputation as a lawyer by disclaiming all responsibility for its errors. He knows that it becomes authority in Illinois, and that it will be embalmed in the "Reports." He sustains the decision, barring the errors in it. When the passions of this hour are gone, when the bar of Illinois is laughing at the decision as a legal statement, Judge Mulkey reserves the right to say: "I told you so at the time; I said then that errors were in the record: these that you ridicule are the errors that I meant." This resource cannot avail him, because he was not brave enough to

expose in a separate opinion the errors he confessed. Chief Justice Pilate confessed that there were errors in the trial, and even washed his hands of the judgment, but the stain remains forever. Mr. Justice Mulkey consented to the death of seven men under a judgment which, although legally defective and infirm, was good enough for them. The intimation of Mr. Justice Mulkey that he had a dissenting opinion in his mind, which he declined to spread upon the record, was of itself a full justification for interference by the governor of the state.

THE ODDS AGAINST THE PRISONERS.

In the trial of the anarchists the law itself was bent and strained to the breaking point. On the floor of the court house they stood at a perilous disadvantage. The scales of justice were not poised evenly between the accused and the state. They were poor; the prosecution rich. The whole machinery of the city and county government was at the service of the prosecution. The treasury was reckless of cost. The police force, the detective force, and every official influence were active against the prisoners. They were beaten from the start. In the arena of life or death they fought against odds unfair and invincible. They played for a jury with dice loaded against them. The indictment was a bewildering contradiction of sixty-nine discordant counts, and every count was the horn of a dilemma. If Schnaubelt threw the bomb, says the Supreme Court, you are guilty as his accomplices, because the indictment alleges that Schnaubelt threw it. If Schnaubelt did not throw the bomb, as you have tried to show, then the case of the state is proved, because the indictment says that it was not thrown by him, but by an unknown person. The exact language of the court is this:

All the proof introduced by the defendants thus tending to show that Schnaubelt did not throw the bomb tended also to prove that an unknown person threw it.

From a dilemma like that escape is hopeless. Evidence and its contradiction are alike fatal to the accused. From a labyrinth of sixty-nine counts the most experienced pilot cannot extricate the prisoners. There is not a guide either in legal or moral philosophy that can show the way out. On this subject the rebuke of Lord Chief Justice Denman, in delivering judgment in the O'Connell case, may be quoted with approbation. He said:

I must take the liberty to throw out an observation that, in my opinion, there cannot be a much greater grievance or oppression than these endless, voluminous and unintelligible indictments. The indictment which fills fifty-seven folio pages is an abuse to be put down, not a practice to be encouraged.

In the O'Connell case there were eight defendants, as in the anarchist case, and they also were imprisoned in the convolutions and sinuosities of an indictment with many counts, "endless, voluminous and unintelligible." The indictment which drew from Lord Denman that indignant criticism contained only eleven counts, while that against the anarchists contained sixty-nine. This is a six-fold greater "grievance and oppression" than the indictment in the O'Connell case, and the wrong is multiplied a thousand fold when we remember that the anarchists were on trial for their lives, while in the O'Connell case the offense charged was only a misdemeanor punishable by imprisonment and fine.

THE SUPREME COURT EVADES ITS DUTY.

A perusal of the decision will show that it is open to severe criticism, not only for the manner in which certain points are examined and reviewed, but also for omitting to give any reasons for deciding other points adversely to the prisoners. The court, after passing judgment upon a number of objections raised by the defense which the judges designate as "the most important," speaks of "some other points of minor importance which are not noticed." "As to these," the weary court remarks, "it is safe to say that we have considered them and do not regard them as well taken." When a man condemned to die points out what he claims were errors in his trial, and asks the court of last resort to pass upon them and give reasons, a refusal to do so is a wrong as plainly visible to layman as to lawyer. It is a flippant thing to sentence a fellow-man to death and at the same time tell him that the points of his appeal have been considered, that they are not well taken, and that it would be a "tiresome" thing to explain the reasons why. The proof that they have been considered should appear in reasons for rejecting them, and it is the duty of the court to show wherein they are not well taken.

The judges, in mercy to the condemned men, should have argued, not only such points of the appeal as they considered "most important," but also every point which the men whose lives

were at stake regarded as of any importance whatever. Had the decision been the reversal of a verdict, it would have been necessary to present only reasons enough to justify the reversal, disregarding all the others; but this was the affirming of the death sentence against seven men. The defendants had an equal right with the judges to say what assignments of error were "important." Considering that the court was weaving a very long rope for the hanging of seven men—weaving it out of a confused tangle, composed of threads of evidence some of which, according to the decision itself, were legal and some of them not—the statement of the court that any further comment "would swell the opinion into *tiresome* proportions" is no sufficient excuse. There are many cases involving only dollars, where longer opinions have been written without exhausting the court. In the "Mordaunt" case—a mere suit for divorce—the opinion is five times as long as the opinion in the anarchist case. In the "Claimant" case—a trial for perjury—the opinion is ten times as long. Dividing the opinion by seven, the number of men condemned, the allowance for each was not large, and although the whole duty of giving reasons may have been "*tiresome*," the duty ought to have been done.

The Supreme Court was peevish in satirizing the argument of the defendants as "*lengthy*." No doubt it was very "tiresome" to consider a "lengthy" argument on such a trifling matter as the hanging of seven men. The judges must have been going to dinner when they administered this rebuke: "In their lengthy argument counsel for the defense make some other points of minor importance, which are not noticed." This contemptuous dismissal will be a warning not to offend again. It is true that the trial was lengthy; the indictment was lengthy; the rulings and instructions of the trial court were lengthy. For all these the prosecution was to blame, not the defendants; nevertheless the Supreme Court betrays impatience because counsel make a "lengthy" argument in behalf of men condemned to die.

THE WRONG OF REFUSING SEPARATE TRIALS.

As if the tortuosities of the indictment were not sufficiently complicated, they were again multiplied by eight when the court refused a separate trial to each of the defendants. There is not another state trial in the history of political prosecutions where

eight men were tried together for their lives on an indictment containing sixty-nine counts. There is not an enlightened nation on the globe that would permit it, and if such a trial can legally hang a man in Illinois her civilization needs hurrying up. It is now conceded by enlightened law that it is enough for any one man to defend his own life when the state is arrayed against him in the courts. He is not to be borne down by testimony given against other men who may happen to be indicted with him. To imperil an innocent man by compelling him to join his own defense with that of men who may be guilty, is a wrong, not only against him, but against the just and humane spirit of the law itself. It shocks the moral sense, and wherever it is done, or attempted, a cloud of suspicion settles down upon the trial.

The Supreme Court decides that the matter of separate trials is within the discretion of the court below to allow them or deny them. This may be doubted, but, if true, it is a judicial discretion, not an arbitrary power; a discretion subject to be reviewed by the Supreme Court, and corrected wherever its exercise has been oppressive or unjust. It is a discretion that may be reviewed by the governor of the state when by its operation the lives of men are placed in jeopardy. The joinder of the defendants made the testimony against each avail against all. It practically deprived them of the benefit of each other's testimony; it embarrassed them at every step of the trial, and it confused the jury, who never even tried to sift the evidence or apply it. In hopeless bewilderment, they contented themselves with a hurried verdict of guilty "as charged in the indictment," an indictment which alleged the killing of Degan in sixty-nine different ways. They never read the indictment, for they were not out long enough to do so.

Whatever may have been the practice in former times, the current of judicial opinion in modern days has swept away the injustice by which men were tried in batches under indictments fraught with death. The doctrine may now be considered established in law, as it always was in morals, that defendants in capital cases are entitled to separate trials as of right. It is not a matter at all within the discretion of the court. Even under the sanguinary criminal code of England in the days of political persecution the right of defendants to be tried separately was freely allowed. In the present day a refusal of it would be considered an illegal

act, poisoning the whole current of the trial. In the case of Frost, Williams and Jones, before referred to, the defendants asked to be tried separately, and, although the court was bitterly prejudiced against them and their revolutionary principles, their demand was conceded as a matter of absolute right. The irrational cruelty of the opposite doctrine is powerfully exposed by the fate of Oscar Neebe.

THE CASE OF OSCAR NEEBE.

Oscar Neebe was tried for murder conjointly with Spies, Parsons, and five others. Knowing his own absolute innocence, and not knowing what evidence might be brought against the rest, he asked for a separate trial. His request was refused. Although all the evidence against him could have been given in a few minutes, he was compelled to stand in peril for two months while all sorts of testimony was poured into the jury-box against seven other men indicted with him. At the end of that time the jury were so stupefied by the incongruous mixture that they actually found all the defendants guilty of murder in the first degree, Oscar Neebe with the rest.

It seems hardly credible, yet it is true, that all the testimony against Neebe would not justify a five-dollar fine. In their appeal to the Supreme Court his counsel say: "We find ourselves at a loss to argue the case of Mr. Neebe. There is absolutely nothing in the record to support his conviction, and in presenting this case to this honorable court we will rest as to Mr. Neebe, and wait to see what the prosecution can say upon this record in support of a verdict and judgment against him under the above indictment." This challenge was accepted by the state's attorney, and answered thus:

First. Neebe was a stockholder in the *organization* which owned the *Arbeiter Zeitung*.

Secondly. On Monday evening, May 3d, Neebe went into the saloon of Franz Heun and showed him the "Revenge" circular; he spoke to Heun about the McCormick riot, and said: "It's a shame that the police act that way, but maybe the time comes that it goes the other way—that they get a chance, too."

Thirdly. Michael H. Marks, a police officer, went to the office of the *Arbeiter Zeitung* on the 5th of May; found Neebe there, who said he was in charge of the office in the absence of Spies and Schwab; Macks told him he was going to search the office; Neebe

said: "All right, you will not find anything there but papers and writing material"; Marks found a bag containing dynamite; asked Neebe what it was; Neebe said: "I guess that is something for cleaning type."

Fourthly. John Stift, a police officer, went to the house of the defendant Neebe on Friday, the 7th of May, and found there a pistol, a sword, a breech-loading gun and a red flag.

Fifthly. Neebe belonged to the International Association, North Side Group.

The above is all the evidence that the prosecution pretends to have had against Neebe, yet on that flimsy showing the jury found him guilty of murder in the first degree; yea, of sixty-nine different kinds of murder in the first degree; and the Supreme Court, befogged like the jury by the confusion of testimony against eight different men, blindly affirmed the judgment against Neebe. A jury which, from prejudice or ignorance, or both, could say guilty of murder on evidence so unreal and frivolous was not competent to render a rational verdict on any array of facts whatever. A verdict by a jury of Indians would be entitled to as much consideration. They rashly followed the advice of the state's attorney, and found the man guilty of murder, treason, anarchy, disorderly conduct and "flat burglary."

This evidence, trivial as it is, grows weaker on cross-examination; but, without presenting the other side of it, allowing it to stand exactly as it appears in the brief of the state's attorney, it is entirely consistent with innocence. Neebe, had he the least idea that the possession of arms and a red flag amounted to murder in Illinois, or even evidence of murder, could easily have got rid of them between Tuesday and Friday. So, also, he could have thrown away the package of dynamite on Wednesday morning, before the policemen searched the office, had he known what it was. His answer to the policeman must convince any candid mind that he did not know what it was any more than the policeman did, who testified that he thought it was greasy sawdust.

PARTISAN PLEADING BY THE SUPREME COURT.

The opinion of the Supreme Court read like the artful plea of an advocate. It is not the stately reasoning of a dignified and fair tribunal. Here's the subtle way the court made a slip-knot for the anarchists :

On Dec. 29th, 1885, the North Side Group, *to which Neebe belonged*, held a meeting at 58 Clybourne Avenue, and adopted the following resolutions.

That is like holding a man responsible for the proceedings of a Freemason's lodge, because he is a Freemason, although he was not present at the lodge meeting, and knew nothing of its action. Neebe was not at the meeting referred to, and knew nothing about the resolutions. The duplicity of the *suggestio* contained in the above quotation is visible through its thin disguise. A little further on, and just by way of practice, the suggestion is repeated thus :

The defendant Neebe, as has already been stated, was also a member of the North Side Group, which had resolved "not to meet the enemy unarmed on May 1, 1886."

It was not Neebe that "had resolved," but the "North Side Group." Neebe is stealthily brought in by the process of insinuation, which answers for evidence.

Worse than that, the Supreme Court condescends to garble testimony, in order to shore up the tottering case against Neebe, thus:

He stated to the officers that a package of dynamite which they found in a closet on one of the floors of a building was something for "cleaning type."

Here the court again betrays itself, and reveals the advocate. The plea of the court is that Neebe made a positive statement that was false. Even the willing policeman was not so "willing" as the Supreme Court to make testimony against Neebe. He testified, as the record shows, that Neebe said, "*I guess* that is something for cleaning type"; the natural answer of an innocent man, who did not know what the "yellow-looking sawdust" was. The distance is immense between the statement made by Neebe and the perversion of it made by the Supreme Court. Those three specimens of partisan pleading are enough for the present.

In addition to all that, the Supreme Court, in a very careless way, falls into error concerning the facts about Neebe. In the following statement the court makes a serious mistake :

He is shown to have been president at meetings where the use of arms and dynamite against the police was advocated on Monday night, May 3, 1886.

Nothing of the kind was shown, or could be shown; and the court must have confounded Neebe, another meeting, and another

time, with the Monday night meeting and another man. This injustice was not intentional on the part of the Supreme Court, for the blunder was easy to make. The whole record of the trial was a big library of premeditated confusion, bewildering jurymen, judges and the governor.

As the albatross hung around the neck of the ancient mariner, weighting him down with remorse, so Oscar Neebe hangs upon the state's attorney. To release Neebe would be to acknowledge wrong, because, as Robert Emmett said in his death speech to the court, "there must be guilt somewhere." The release of Neebe would fasten the guilt of his conviction upon the prosecution and all its ministers. It would be a confession, and therefore the state's attorney will not dare to ask for the liberation of Oscar Neebe.

Be it remembered, as the jargon of the lawyers has it, be it remembered that Neebe was not at the Haymarket meeting, nor at the Monday night meeting which called it, nor at the meeting of the North Side Group which "resolved," etc.; that he made no speeches, and wrote no articles. As his counsel strongly and honestly say, "There is no pretense finding support in the evidence that he was present at the Haymarket meeting, or knew of the purpose of holding it, or was consulted as to calling it, or knew that the same would be held; and there is no testimony that shows or tends to show that he advised, aided, encouraged, abetted or assisted the throwing of the bomb." Well may they find themselves at a loss to argue the case of Neebe.

By trying the defendants all together, nearly every piece of evidence against them separately was multiplied by eight. For instance, a public speech made by Parsons in February, 1885, is made evidence against Fielden and six other men on trial for a murder committed in May, 1886. So, a public speech made by Fielden in March, 1885, is made evidence against Parsons and six others in the same way. Old editorial articles by Spies were made evidence against Parsons and the other six, while editorials by Parsons were transmuted into testimony against Spies. The defendants were weighed down with hundreds of criminations, which, having reference to only one of them, were made to bear upon them all. Says the court:

Spies, Schwab, Parsons and Engel were responsible for the articles written and published by them as above shown. Spies,

Schwab, Fielden, Parsons and Engel were responsible for the speeches made by them respectively.

Here Fielden, whose name appears not in the first sentence, is ingeniously woven into the mixture of writing, publishing and speaking, although he never wrote or published anything.

If it is pretended that the jury applied the evidence to the defendants "*respectively*," the proof is absolutely conclusive that they did not. It was impossible for them to do so in the short time occupied by them in deliberation. In that short time they could not have reviewed, compared or applied the evidence either to the counts in the indictment or to the defendants "respectively."

The Supreme Court itself was compelled to recognize the illegal character of the testimony above described, although in an apologetic way. The confession and apology of the court is in these words:

Declarations that are merely narrative of what has been done or may be done are incompetent, and should not be admitted except as against the defendant making them or in whose presence they are made. The utterances of the defendant Spies, whether in his paper, his speeches or his conversation, were in furtherance of the purposes and objects of the conspiracy in which he was engaged. If testimony as to expressions used by him, that are not of the character here indicated, has *crept into the record*, it is so inconsiderable that it could not in any way have injured the other defendants.

What, then, was the testimony that injured Neebe? Surely not the testimony against him. It must have been the testimony against Fielden, Parsons, Lingg, and Spies.

Unfortunately, a great deal of testimony "not of the character indicated" was admitted, not only against the defendant making the declarations, but against all the others. It is a violent assumption that it could not have injured the others when it is remembered that the jury did not attempt to sift the evidence and attach each piece of it to the particular defendant implicated by it. Other errors are mildly rebuked for having "crept" into the record. They did not creep in. They were crowded in against the protest of the defendants and to their serious injury. By trying eight men together on an indictment of sixty-nine counts the door was thrown wide open, and errors did not have occasion to creep in. They were invited in and welcomed. The court reasons as if the defend-

ants insisted on a joint trial, and are therefore responsible for the illegal consequences. The prosecution is responsible, not the prisoners.

The arbitrary joinder of the defendants virtually deprived them of the benefit of each other's testimony. This is not contradicted by saying that they were offered as witnesses and allowed to testify. Their testimony was discredited by the jury, and the Supreme Court intimates that the jurors were justified in disregarding it, because the men were on trial for their lives, and therefore interested enough to speak falsely. Thus, in referring to Fielden's testimony, the court says:

> It was for the jury to determine whether he told the truth or not. They had a right to consider that he was on trial for murder.

All through the argument in the trial below the jury was urged by counsel for the state to disbelieve the testimony of the defendants, because they were on trial. Here again the prosecution takes advantage of its own wrong. Having joined the defendants in the trial against their earnest protest, the state urges its own wrongdoing as a reason for disbelieving them. Had they been separately tried, this reason would not have existed except as to the value of each man's testimony for himself. Each man not on trial would have been a credible witness for the others. At all events, it could not have been objected to his testimony that he was on trial for his life.

UNFAIR TACTICS OF THE STATE'S ATTORNEY.

The course pursued by the counsel for the state was unfair throughout the trial. A few examples of the strategy and tactics they employed will prove this accusation. They were permitted to imitate Mark Antony when he inflamed the passions of the populace by pointing them to "Cæsar's vesture wounded." They were permitted to show the jury not only the wounded vesture of Matthias Degan, but also that of several other men whose names were not in the indictment at all. They were permitted to call the attention of the jury to the blood upon the vesture, after the style of Antony, when he said:

> See what a rent the envious Casca made—
> Through this the well-beloved Brutus stabbed;
> And as he plucked his cursed steel away,
> Mark how the blood of Cæsar followed it.

The artful stump speech of Antony was perfectly legitimate. It was not made in a judicial proceeding, but in a political contest. He was of the opposite party to that of Brutus. The struggle between them was for the possession of the offices and the control of the government. But had Antony been state's attorney, prosecuting Brutus and Cassius under an indictment for the murder of Cæsar, the Roman judges would not have allowed him to practice before a jury in the court house the methods he employed in the streets before a mob. The object of Antony in Cæsar's case and of the counsel for the people in Degan's case were alike to excite feelings of anger and revenge in the men they were talking to—the jury in the one case, the mob in the other. There was no dispute whatever about the matter of Degan's death, and therefore the exposure of his wounded vesture to the jury was useless and superfluous, except as an appeal for vengeance. The Supreme Court, unwilling to sanction such a method, finds a weak excuse for it, and mildly rebukes it thus:

The articles in question were presented in the condition in which they were left after being exposed to the force of an exploding bomb, for the purpose of showing the power of dynamite as an explosive substance. While this kind of testimony may not have been very material, we cannot see that it was to such an extent incompetent as to justify a reversal.

No, it is not pretended that every error is enough of itself to justify a reversal, but when the errors are multitudinous, as they are in this case, a new trial ought to have been allowed. The power of dynamite as an explosive substance was not in issue. It was conceded that dynamite was an explosive substance, and that a dynamite bomb killed Degan. The jury knew that dynamite was an explosive substance. They knew it as well before the torn and bloody clothing was exhibited as they did afterward. Mark Antony could as pertinently say that he showed the rent vesture of Cæsar to convince the people that daggers had the power to cut. The excuse fails; the purpose of the exhibition is too plain.

The counsel for the state were permitted to put leading questions to their own witnesses, notably to Gilmer, the most rickety witness of all. He swore that he saw the bomb thrown and could recognize the man who threw it. A portrait of Schnaubelt was handed to him and he was asked if that was the man. His answer

was: "I say that is the man that threw the bomb out of the alley." The question was leading, for it lead the witness to the desired answer, yes. The offer of the picture by itself for identification was unfair. It should have been mixed with others and the witness required to select the portrait of Schnaubelt, without aid or suggestion from anybody. So he was permitted, in a theatrical way, to point out Spies as the man who lighted the fuse. This was all done after the style and manner of the minor theaters where the villain of the play is accidentally identified by a stranger who suddenly appears upon the scene. It is amazing that the Supreme Court allowed itself to be imposed upon by this bit of melodrama. Here is the way the scene is described in the written opinion:

When shown a photogragh of Schnaubelt, he said: "I say that is the man that threw the bomb out of the alley." When asked who the man was that came from the wagon towards the group referred to, and lighted the match, he pointed to the defendant Spies, and said, "That is the man, right there."

This, if natural, would be impressive, but it was entirely mechanical and artificial. As the mummery of stage identification is rehearsed behind the scene, so was this. The witness had rehearsed his part, and very likely had studied the picture. It had been shown to the witnesses for the state by the assistant district attorney, in his own office, and it is morally certain that it had been shown to Gilmer. So, as to Spies. Gilmer had seen the prisoners day after day, and knew them all. A performance which could impress a calm judicial body like the Supreme Court must have made a still greater impression on the jury.

It is shown by a chain of impartial circumstances that the testimony of Gilmer cannot possibly be true. He is contradicted by the positive testimony of a great many witnesses for the defense. He is contradicted by the negative testimony of witnesses for the prosecution. His testimony and theirs cannot be reconciled. His testimony is inconsistent with itself, and it is contradicted by inanimate witnesses that cannot lie—the street, the alley, the houses in the neighborhood of the tragedy, the wagon, the pile of lumber, and the stature of Schnaubelt. These all bear witness that the testimony of Gilmer is not true. It is impossible that the counsel for the state could have believed it at the close of the trial, though they may have believed it at the beginning. Notwithstanding its demon-

strated falsity the testimony of Gilmer was played on the jury with great ingenuity. It was reinforced from Des Moines so that it might last until the rendition of the verdict. Its importance to the state was very great, for it was the only thread that connected any one of the defendants with the actual throwing of the bomb, and though it was weak as the thread of smoke that rises from the burning end of a cigar, it played an awful part in the doom of seven men. More than any other part of the secondary evidence, it controlled the jury; and although the Supreme Court evidently distrusted it, and even disbelieved it, the tremendous judgment of the court tries to rest upon it. Uneasy there, it throws the responsibility upon the jury, and seeks a foundation somewhere else. Here is the nervous expression of the court:

There is a mass of testimony in the record in reference to the statements made by Thompson and Gilmer. Some of this testimony sustains those statements and some of it discredits them. It is sufficient to say that it is very conflicting. It was the province of the jury to pass upon it. They had a right to consider it in connection with all the other facts and circumstances in the case. It is not necessary for us to pass any opinion upon it, as we think there is evidence enough in the record to sustain the finding of the jury independently of the testimony of Thompson and Gilmer.

In the presence of reasoning like that the imperilled citizen stands paralyzed and helpless. If it is not necessary to pass any opinion upon disputed testimony which influenced a jury to condemn seven men to death, then such a duty never can be necessary in any case. "Not necessary to pass any opinion!" Why, one thousand words of the decision is given to the testimony of Gilmer alone. And every word of the thousand is an expression of opinion. Every word of it is adverse to the defendants, and the benefit of every doubt is given to the state. In those thousand words are these:

Witnesses for the defense identified mostly with the International organization, and from whom the shots fired at the police *must have come.*

What is that but the expression of an opinion adverse to the witnesses who contradicted Gilmer? It is hardly a judicial expression either, for it shows feeling on the part of the court. The genuine opinion of the Supreme Court that the testimony of Gilmer was worthless glimmers in the concluding sentence. "There is

enough to sustain the finding independently of the testimony given by Thompson and Gilmer."

THE PROVINCE OF THE JURY.

Wherever the evidence is weak, false, contradictory, improbable, or impossible, redress is denied on the ground that it was "the province of the jury" to act upon it in their own way. The testimony is important if true, reasons the Supreme Court, unimportant if false; there is enough without it.

In that very dangerous way, a jury manifestly unfriendly to the defendants is made sole critic of the evidence. It is in the appeal of the defendants that the jury itself was not "impartial," that it was a class jury, not fairly chosen from "the body of the county," that care was taken to select persons hostile to the accused even from the classes drawn upon, and that the state was allowed a greater number of challenges than the law intended; a number, which, whether legal or not, gave the prosecution an unfair advantage. Yet this jury is given absolute ownership of the evidence in the case, to use it at their own discretion for one side and against the other, even to the hanging of seven men. The Supreme Court abdicates its power to pass upon the character, quality, and sufficiency of evidence in the most important case ever tried in the state of Illinois. This in *tiresome* phraseology repeated over and over again.

"*The jury were warranted in believing* that the bomb was made by Lingg;" "*the jury were warranted in believing* that the Haymarket meeting was not intended to be peaceable;" "*the jury were warranted in believing* that the bomb was thrown and the shots fired as a part of the execution of the conspiracy;" "*it was for the jury to say* whether the evidence for the defense was more worthy of belief;" "*the jury had the right to look at it* in the light of the principles advocated by the International organization;" "*it was for the jury to say* how far that fatal result may have been brought about through the influence of the utterances put forth by the organs here designated;" "*the jury were warranted in believing* that Parsons was associated with the man who threw the bomb;" "*it was for the jury to say* whether any others than the members of that conspiracy had undertaken to make such weapons;" and so on, in monotonous formulary, page after page. A jury which the defendants allege

was not impartial is made infallible judge of the legal and moral quality of all the evidence.

In selecting a jury to try the anarchists the principle of impartiality was violated. The form of the statute may have been observed, but the spirit of the law was not. Whole classes of qualified persons were stricken from the jury lists, or at least, they were not summoned in the case, which amounts to the same thing. Unfortunately these were what are known as the "working classes," the classes to which the defendants belonged, and of which, in part, they were supposed to be representative in socialistic and political opinions. These were disqualified for jurymen as effectually as if they had been disfranchised altogether. The whole machinery of legal administration was in the hands of the prosecution; and a common bailiff, a subordinate part of that machinery, was made absolute dictator and autocrat of a jury. The honest safeguard known as "drawing" for a jury was not observed. The equal chance which the "drawing" of jurors from a list of disqualified voters gives to both sides was not given to the defendants. The jurors were not "drawn," but "summoned." They were summoned by a mere bailiff, man by man, at his own arbitrary will and pleasure. After he had strained and filtered the jury population of every man belonging to the same classes as the defendants, the prosecution was allowed to filter even his unfair selection by 120 peremptory challenges. Even of the twelve who tried the case, nine confessed themselves prejudiced against socialists, anarchists, and communists, while some of them even admitted that they were prejudiced against the defendants. Yet this is the jury "whose province it was" to pass upon all the evidence, and who were "warranted in believing" anything against the defendants. To hang men on the verdict of a jury thus chosen and impanelled will be a stain upon the jurisprudence of Illinois long after all the actors in the drama shall have passed away.

The above criticism on the jury that tried the anarchists, was published a week before their execution in the pamphlet entitled "Was it a Fair Trial?" A month after their execution, the judges of Chicago, humiliated and ashamed, virtually acknowledged the justice of the criticism, and recommend that the mode of selecting jurors be reformed. Awed and conscience-stricken they advise the restoration of trial by jury in Chicago. In their argument for a

change of system, they practically confess that trial by jury, in its constitutional meaning, has been abolished in Illinois. When they wrote the following manifesto they must have had before them a vision of seven men illegally condemned to die. It is a *post-mortem* reversal of the judgment of the Supreme Court. The words of it wander through the haunted cells of the county jail like the moan of a repentance that comes too late. They are not anarchists, but Chicago judges, who say :

The jury system is valuable in so far as it yields impartial juries, and when it does so it is invaluable ; when it fails to do this it is pernicious and dangerous. To be impartial the jury should be selected from all honest walks of life—*from the body of the people*—and in such manner as to preclude their being selected or excluded because of race, color, creed, or *political opinions.* This can be done by using a method of selection in accord with existing provisions of the law, and that will prevent any of the public agents charged with the duty of furnishing jurors for courts from saying beforehand *what individuals are to be placed on or debarred from the jury list.*

All citizens possessing the legal qualifications of competent jurors prescribed by the statute constitute the body of the people from which trial juries should be *drawn.* The following suggestions show how this can be done, and done in such a way that impartiality and honesty can be secured. Taking the precincts one by one, write the names and residences of all the voters of a precinct on separate cards and place these in a box, and, in the presence of a committee from the county board and the county clerk, let there be *drawn from the box*, after the cards bearing the names have been well shaken up, a number of the names equal to one-tenth of the whole number in the box. The cards bearing the names and residences of the one-tenth of the whole body of the citizens thus selected from each and every precinct in the county to constitute the jury list, all to be placed in a large box, to be known as the jury-box, to be provided for that purpose, the same to be then thoroughly shaken, such a box to be in the custody of the county clerk. Thereafter the clerks of the various courts, as jurors are needed for the term or on special venire (if the court directs) are to proceed to the county clerk's office and *draw at random*, a sufficient number of names from said box, as provided by section 8 of the statute on jurors.

When the jurors appear in court the judge is to examine all under oath, both as to qualifications and to pass upon excuses, and to dismiss all who do not appear to have the necessary qualifications and all who do not appear to have reasonable and proper excuses. The bailiff in each court is to be furnished with a small box in which the cards bearing the names of the panel of jurors are to be placed

and the jury to be called by *drawing these cards one by one at random* from this box. In this way, and in this way only, can juries be secured in accordance with the provisions of the jury system. This jury list, thus selected, will be sufficient for about two years or more.

We submit this plan to the honorable board of county commissioners, with our approval, satisfied that it is feasible and fair. The idea of selecting at random from all the names furnished by the court commissioners is in force in the United States courts in this district, and gives satisfaction. All who are exempt and disqualified by statute to be stricken from the list.

We approve the foregoing:

RICHARD PRENDERGAST,
RICHARD S. TUTHILL,
JOHN P. ALTGELD,
ROLLIN S. WILLIAMSON,
FRANK BAKER.

This memorial is not only a concession, but a claim that the jury in the anarchist trial was unfair. The words in italics are an eloquent condemnation of that jury, of the despotic agencies that contrived it, and of all the judicial and executive magistrates who affirmed and ratified its mad, revengeful judgment. The jury was not "*impartial*," it was not selected "*from the body of the people*," it was not "*drawn from the box*," it was not "*drawn at random*," it was not "*drawn*" at all. It was summoned by a mere bailiff, charged with a mission of death, a subordinate official who was actually invested with the very power which those five judges declare to be "pernicious and dangerous," the power of "saying beforehand what individuals are to be placed on or debarred from the jury lists."

WAS THE JURY PACKED?

Judge Prendergast, in urging the reform in the jury system, said: "There is no more reason why a clerk or bailiff should select jurors than that they should select judges." There is hardly a lawyer in Illinois, off the Supreme bench, who will not agree with Judge Prendergast in that opinion; and the force of it is increased when he reminds us that in Illinois the jurors in criminal cases are invested with judicial powers, being judges both of the law and the facts. Those five judges will agree that the jurisprudence of Illinois must suffer a long term of reproach because in the anarchist case a bailiff actually did select the jurors; and it is charged upon him

that he actually did "select" them in the sense of picking them out for a special and a fatal purpose.

That the bailiff had the power to pack the jury is not denied by anybody; that he did pack the jury is disputed, but the evidence against him is very strong; that he said he would pack the jury is charged by affidavit of Otis Favor, a citizen of Chicago, personally acquainted with the bailiff. This affidavit has not yet been answered by a counter affidavit, and the presumption arises that it is true. That the trial court denied an application for leave to examine Otis Favor as a witness to the misconduct of the bailiff is confessed and admitted in the record. In justice to all the parties concerned it is only fair that the whole matter of the bailiff's alleged misconduct should be impartially set forth.

Otis Favor is a man of high character and standing, doing business in Chicago, and he was personally well acquainted with Ryce, the bailiff. After the trial was over Favor told Mr. E. A. Stevens that when Ryce was selecting the jury he said to Favor, in substance this: "I am managing this case and I know what I am about. Those fellows will hang as certain as death. I am summoning as jurors such men as they will be compelled to challenge, and when they have exhausted their challenges, they will have to take such a jury as is satisfactory to the state." Stevens made affidavit that Favor told him this in private conversation. Thereupon defendants, in their application for a new trial, asked that Favor be summoned and examined as to the alleged boast of Ryce. This application was refused, the judge deciding that the court had no power to order the attendance at that time of Otis Favor. It should be stated here that Mr. Favor refused to appear and testify or to make any affidavit unless required to do so by an order of the court. The order was refused. He made the affidavit afterward.

In denying his power to command the attendance of Otis Favor the judge was certainly wrong. The constitution provides that defendants in criminal cases shall have *compulsory process* for the attendance of their witnesses. Motions for a new trial are generally supported by the affidavits of witnesses, and if a person who has knowledge of any matter valuable to the motion refuses to appear and testify, he may be compelled to do so. The courts have always exercised the power to bring him to the witness stand by

"compulsory process." Without this power courts would be deprived of half their jurisdiction.

The state's attorney, knowing that the judge had made a mistake in ruling that the court had no power to compel Otis Favor to appear and testify, deserted his friend and abandoned in the Supreme Court the erroneous ruling which he had taken advantage of in the court below. He left it outside on the door step, like an illegitimate waif, and substituted another reason for it. He said that it was a matter in the discretion of the court and that

The court exercised the proper discretion in refusing to have anything to do with it, because no injury and no prejudice had resulted from the alleged conduct of said bailiff against any defendant.

He knew when he wrote that in his brief that the jury thus unfairly chosen by the bailiff had actually condemned seven men to death. A mere trifle, your honors, a mere trifle, from which "no injury and no prejudice has resulted."

Still feeling insecure, the state's attorney, with daring hardihood, confessed the accusation he was unable to deny. With a brazen effrontery that reminds us of the crown prosecutors of the olden time, he asserted that the bailiff acted well. Quoting the charge against Ryce, he said:

There is nothing objectionable in all this, if true, and it means simply that Ryce was endeavoring to summon intelligent and competent jurors, against whom no ground of objection and no cause of challenge could be laid. The statute says that he shall summon persons having "the qualifications of jurors," etc. Did counsel expect him to summon disqualified and incompetent jurors?

The boast of Ryce was that he was summoning such jurors as the defendants would be "compelled to challenge;" the state's attorney says that this "simply means that he was endeavoring to secure jurors against whom no cause of challenge could be laid." Such wrenching of words and distortion of their meaning could only be ventured on by an attorney confident that the court was with him, and that his case was safe.

In the Creator's code of moral government it is provided that some peculiar offenders shall execute retributive justice upon themselves. This was the fate of the state's attorney who tried the anarchists. He was compelled to stultify himself while his enemies

laughed at his humiliation. Shortly after justifying the conduct of Ryce the bailiff, it became the duty of Mr. Grinnell to try a batch of county commissioners charged with corruption in office. Another bailiff was now in power exercising the "*vicious and dangerous*" privilege of "summoning" the jury. All at once the state's attorney suspected that the bailiff was packing the jury, not for the state, but for the defendants. Instantly he reversed himself and contended eagerly for the doctrine he had so recently condemned. His plea to the court was a retort upon himself. He complained that the bailiff was acting unfairly to the prosecution, and begged the judge to order certain persons to be examined in open court in support of his charge against the bailiff. His request was granted, and the result was that three men were stricken from the jury, although they had been actually accepted in the manner prescribed by law. It was highly meritorious in the bailiff who "selected" a jury hostile to the anarchists, but very reprehensible in another bailiff to select a jury favorable to the commissioners. Had he packed the jury against the commissioners, the attorney would have said that the bailiff "was endeavoring to summon intelligent and competent jurors against whom no ground of objection could be laid."

The Supreme Court adopted the argument and very nearly the phraseology of the state's attorney in the matter of the bailiff. They say this:

The refusal of the court to grant the application is competent. The statements in the affidavit were mere hearsay, and were too indefinite and remote to base any action upon. Moreover, if Mr. Ryce did make the remark to Favor it does not appear that defendants were harmed by it. There is nothing to show that Ryce made any remarks of any kind, proper or improper, to the jurors he summoned.

In those sentences there may be observed a style of judicial pleading that Supreme Courts do very seldom condescend to now. True, the statements in the affidavit of Stevens were hearsay, but they were a proper foundation for an order compelling Favor to testify, and his statements would be original testimony, and legal evidence. Affidavits based on hearsay have always been used as a foundation for the process of the courts. Scarcely a day passes in any court where they are not employed. "*As affiant has been in-*

formed and believes" is a formula in constant use. Not to act upon it because it is only "hearsay" would be what never has been, an abdication by the courts of their power to perform that for which they were instituted, which is to have justice done. Such affidavits —and even beliefs unsworn to—were held sufficient foundation for the introduction of evidence concerning the misconduct of the bailiff in the case of the county commissioners, and why not in the case of the anarchists?

The plea of the Supreme Court that it does not appear that the defendants were harmed by the remark of Ryce to Favor, and that there is nothing to show that Ryce said anything to the jurors whom he summoned is an ancient manœuvre in sophistry. It is useful to divert the argument and send it in a wrong direction. In fox hunting times it was figuratively called "throwing the hounds off the scent." A fellow with a red herring in his pocket could trail the dogs away off to the north while the fox was running to the south. It is the affectation of ignorance to pretend that the defendants claimed that harm was done to them by the remark of Ryce to Favor. The Supreme Court knew better. The complaint of the defendants was that they were harmed by the packing of the jury, of which the remark of Ryce to Favor was merely evidence, an acknowledgement, and a boast. Neither did they claim to be injured by anything said by Ryce to the jurors whom he summoned. The complaint was that the jurors themselves were picked and the jury packed. They objected to what Ryce did, not what he said. They complained that Ryce summoned a jury not to try them, but to hang them. The acts of Ryce are not to be obscured by a cloud of controversy as to what he said.

The Supreme Court intimates that it was necessary to show that the defendants were actually harmed by the illegalities and errors they complained of in relation to the jury. The court may make that ruling a precedent, but never can make it law. It is not anywhere in Christendom that a man condemned to die shall show in his appeal that he was harmed by the selection of a partial, prejudiced, or illegal jury. The sentence of death runs through all the record, and is of itself an omnipresent showing of harm. The law presumes harm to every man sentenced to death by a vitiated or illegal jury. Suppose that Ryce had selected persons disqualified and incompetent by law, and that one of those persons had actually

served upon the jury, will the Supreme Court pretend that a man condemned to death by a jury thus imperfect, must show that he has been harmed by the wrongful selection, before he can take advantage of the error? The error being shown, the law raises a conclusive presumption of harm to the defendant. There may be error without prejudice even in capital cases, but in the anarchist case there was too much of it. It was grim sport to mock men on the steps of the gallows by telling them that they were not *harmed* by the errors and illegalities perpetrated at their trial. What greater harm can befall a man than to die upon the scaffold?

The Supreme Court pieced out the case for the prosecution by the following amendment:

In addition to this, it is not shown that the defendants served Favor with a subpœna, so as to lay a foundation for compelling his attendance.

This curious reason never presented itself either to the district attorney, or the court below. Naturally it would not, because the defendants had no power to serve Favor with a subpœna. The trial was over; they had no case before the court except a motion for a new trial, supported as to matters outside the record by affidavit. They could not introduce unwilling testimony to sustain the motion except by order of the court, and this order they were seeking to obtain. Their showing was that Favor would not voluntarily give evidence, nor make affidavit, and they prayed the court to order a subpœna to be served upon him that he might be compelled to appear and testify.

When, on the 9th of November, intercession was made to the governor for a commutation of the sentence, this accusing affidavit was read to him by Capt. Black. He was evidently unprepared for it, and it startled him like a sting of electricity. He had steeled himself against everything but the clamor of the irrational crowd, and his heart was closed. With strong self-discipline he had nerved himself to show no sign of human feeling, but this affidavit stirred him beyond control, and in a moment of emotion he exclaimed, "Was that statement offered in court?" Being assured that it was, he saw that he had betrayed himself into the hands of amnesty. He escaped again in a moment and showed no further symptoms of palpitation of the heart. He retired into his gloomy fortifications, and there he shut himself up until the end, deaf to reason, justice,

law, mercy and religion. That morning he offered a very good resemblance to King George IV. as he is described in the satire of Thomas Moore:

His table strewed with tea and toast,
Death warrants and the *Morning Post.*

He dismissed the pleading delegations, and the next day he sent the death warrants to Chicago.

THE CASE OF DANIEL O'CONNELL.

In the O'Connell case the defendants were tried in Dublin for a conspiracy to overthrow the British government in Ireland. They were all convicted and sentenced to fine and imprisonment. The judgment was reversed by the English house of lords, on two grounds, one of which was that the jury had not been fairly selected, for that certain classes of jurymen had been omitted from the jury roll. The manner of doing it was this: The recorder of Dublin had made out the jury lists as required by law, and had returned them to the sheriff as his duty was. From the sheriff's office one list containing sixty names mysteriously disappeared. Of the defendants, seven were Roman catholics, and by a curious coincidence it so happened that the missing list was a list of Roman catholic jurymen, and by reason of its absence no Roman catholic was placed upon the trial jury. In other words, men of the same religion as the defendants were excluded from the jury. The defendants challenged the array, but their challenge was overruled for the reason that no fraud or misconduct was charged against the sheriff, and for all that appeared, the missing list might have been lost by accident. The house of lords reversed that ruling and decided that the injury and wrong to the defendants were the same whether the list was absent by accident or design.

It was in passing judgment in this case that Lord Chief Justice Denman used that remarkable sentence which has passed into our proverbial classics, "A mockery, a delusion and a snare." What he said was this:

If it is possible that such a practice as that which has taken place in the present instance should be allowed to pass without remedy, *trial by jury itself, instead of being a security to persons who are accused, will be* A MOCKERY, A DELUSION AND A SNARE.

In regard to the sheriff's responsibility for the loss of the jury list, Lord Denman said:

The defendants have challenged the array on account of the fraudulent omission of sixty names from the list of jurors of the county of Dublin. It appears to me that that challenge ought to have been allowed. I think that the principle of challenge to the array is not confined to the narrow issue whether the sheriff has done wrong, *but involves that larger question whether the party has had the security of trial by a lawful jury of his country.*

To allow a judgment to stand on a verdict rendered by such a jury, Lord Denman said:

Would have the effect of securing success to the worst maneuvres, and of unsettling public confidence in the most important function of justice.

In the O'Connell case only fine and imprisonment were involved, and yet the judgment was reversed because the jury list had been mutilated; in other words, because all classes of jurymen were not represented on the lists from which the trial jury was drawn. In the anarchist case seven lives were involved, and the jury was obtained by worse maneuvres than the "worst maneuvres" employed in the trial of O'Connell. Although nearly a thousand men were summoned, several wards of Chicago were absolutely excluded from representation on the lists from which the summonses were made. Whole classes of qualified jurors were denied a representation on the lists by the arbitrary decision of a common bailiff of the court. That a judgment of death was executed on the verdict of a jury selected in that way, and from a jury list thus mutilated, proves that trial by jury in Illinois instead of being a security to persons who are accused has become "a MOCKERY, a DELUSION and a SNARE."

The judgment in the O'Connell case was held bad for the additional reason that the indictment contained eleven counts, some good and some bad, charging the defendants with conspiracy in eleven different ways, and on a verdict of guilty the court imposed a sentence "for the offenses aforesaid," without specifying on what counts the sentence rested. As two of the counts were held bad by the English judges, it was decided that there was nothing in the record to show whether "the offenses aforesaid" were those charged in the good counts or in the bad ones. The "lengthy" indictment of eleven counts not only confused the jury, but entrapped the Irish judges into the blunder of imposing an illegal sentence.

The trial of O'Connell and his colleages was a political prosecution in which the sympathy of the English was immensely on the side of the government and against the defendants. The feeling in England against the prisoners was bitter and malignant as race prejudice, national hatred, and political antagonism could make it, yet the reversal of the judgment against their sarcastic enemy and defamer was almost unanimously approved by the English people. They said that he did not have fair play in the trial court, and that the judgment against him ought to be reversed. While the bench and the bar were disputing and wrangling over the reversal of the judgment, the people of England, caring nothing for "the sharp, quick, quillets of the law," guided by moral intelligence and the instinct of justice alone, decided that the unfair selection of the jury was an insidious attack upon the liberty and security of the citizen, and that it was not to be endured. They also decided that the law itself was attacked and dishonored when eight men were tried together on an indictment containing eleven counts, a snare of eleven threads. They said, "Better is it that a hundred conspiracies against the government go unpunished than that a judicial conspiracy against the law itself succeed." The journey of Mr. O'Connell to London, after his conviction, was a popular ovation such as few men have ever had in England. Why? Because the English desired to show him that they did not approve the methods by which he was convicted. They knew that the indictment against him was a law spider's web woven to entangle him, and that the selection of his trial jury was unfair. Speaking of the indictment in the O'Connell case, and the reversal of the judgment, an influential London newspaper of the time said:

The indictment was a legal puzzle placed upon parchment to the confounding of all ordinary understandings, and of none more so than the jury who had to decide upon it. It charged all sorts of things in all sorts of ways; the consequence was that many of them were unsound, bad, and untenable in law. The defects were pointed out by the defendant's counsel in the Dublin court of Queen's Bench. But the Irish judges all declared the counts were unexceptionable. When the case is removed to England the English judges all declare that some of the counts are bad; but the majority of them think the indictment is not sufficiently vitiated by it to render a reversal of the judgment imperative. But that opinion not binding the house of lords, it has decided both that the bad counts do vitiate the judgment, and that it ought to be re-

versed; so it is reversed accordingly. The mistakes and mishaps that attended the jury list, and the refusal of the challenge to the array have also had much to do with quashing the decision of the Irish judges. These last points seem to have weighed particularly with Lord Denman; but the grand vice and radical defect of the trial was the "monster" indictment, which may serve as a warning to all future attorneys general to make their charges as unlike it as possible.

THE STATE TAKES ADVANTAGE OF ITS OWN WRONG.

In a light and playful way, Mr. Justice Mulkey, confessing errors in the record, talks irony to the condemned men, and says, "Really, so many of you were tried together, the 'wonderment' is that the errors are not more numerous than they are." The exact language of Justice Mulkey is this :

In view of the number of defendants on trial, the great length of time consumed in the trial, the vast amount of testimony offered and passed upon by the court, and the almost numberless rulings the court was required to make, the wonderment to me is the errors were not more numerous and of a more serious character than they are.

There must have been grim laughter on the Supreme bench at that burst of sardonic humor, for one of the errors alleged in the appeal was that the defendants were refused the right to be separately tried. Mr. Justice Mulkey, confessing errors, permitted them to prevail in the doom of seven men, for the paradoxical reason that errors were inevitable where so many men were tried together. Was it the fault of the defendants that eight men were tried "in a row?" Shall the prosecution take advantage of its own mistake, if not its own wrong? Whether designed or not, the effect of such a number of defendants was to throw confusion into the jury box, and errors into the rulings and instructions of the court below.

Looking at the reasons for Justice Mulkey's "wonderment," the suspicion rises into certainty that all the errors he refers to were premeditated; that with malice aforethought it was deliberately contrived that wrong and not right should be done; that the jury should be confused, and the judge himself made nervous by a multitude of puzzles. Justice Mulkey, no doubt, has very often ruled that a man is presumed to intend the consequences of his own actions. Why did he not apply the maxim to the state's attorney? As Justice Mulkey concedes that the trial of eight men together

must necessarily complicate the case with errors, why should not the state's attorney be presumed to have intended the errors which were the necessary result of his own actions? Had he wished to avoid errors, he should have avoided the cause of them. When a prosecuting attorney insists on trying eight men together for their lives, on an indictment containing sixty-nine counts, the presumption is that he anticipates errors and relies upon them for success.

Like many other judges of some learning and ability, Mr. Justice Mulkey was lacking in judicial courage, when, approving a judgment of death, he condemned errors in the trial of its victims, and dared not specify the errors he condemned. Evidently they were not the errors confessed in the decision of the whole court, because Justice Mulkey intimates that his original intention was to write a separate opinion. He is correct in thinking that this is what he "should have done." In order to hang a few of his fellow men, Justice Mulkey calmly overturned another ancient principle of the law, that where a wrong or error is committed between parties, however innocently done, the loss and injury resulting from the mistake must be borne by the side that made it.

Thus wrong begets wrong, and the Supreme Court travels in a circle round and round. The joinder made errors, and errors are excused because of the joinder. In a "snare" like that four men were strangled. The joinder of defendants at the trial was the act of the state's attorney himself; yet he was permitted to take advantage of it, and multiply his challenges from twenty to one hundred and sixty. The Supreme Court excuses this by quoting the letter of the statute:

> The statute says that the attorney prosecuting on behalf of the people shall be admitted to a peremptory challenge of the same number of jurors that the accused is entitled to. We cannot see how language can be plainer than that. It explains itself, and requires no further remark.

Certainly language cannot be plainer than that, but the statute is to be construed, not according to its language alone, but according to its logically moral meaning, or, as Blackstone has it, "according to the reason and spirit of the law." It never was the reason and spirit of the law that a prosecuting attorney should be allowed to multiply his own challenges at will by joining at his own pleasure a large number of defendants in one indictment, and then

insisting upon it that they all be tried together. The statute means by "the accused" one defendant, and it recognizes in the prosecution only one accuser. The prosecution may multiply the number of defendants by joining them together in an indictment, but it cannot multiply itself by its own arbitrary act and will. Law, or not law, the allowance of 160 peremptory challenges to the prosecution was a "grievance and oppression." It was 160 challenges against each of the defendants, while they were allowed only twenty each against the state. It is very true that the prosecution used only about sixty of the peremptory challenges allowed them, while the defendants exhausted all of theirs, but this itself is evidence that the jurymen selected by the bailiff were favorable to the state and hostile to the defendants. In deciding by the letter of the law, the Illinois judges forgot their early reading. They interpreted the statute, not according to the rules they learned in Blackstone and the text books, but according to the literal method adopted by the young lady chief justice in the celebrated case of Shylock against Antonio.

In the more enlightened states of the American Union, the prosecution in criminal trials is allowed only half as many challenges as are given to the defendant. The reason of this provision is that the state has in its own hands all the machinery of the courts. It prescribes the forms of trial, the salary of the judges, the rules of evidence, the qualifications of jurors, and the mode of their selection. This advantage is supposed to be equalized to the defendant by allowing him twice as many peremptory challenges as the state is entitled to. This is a just and humane rule, a protection to the imperilled citizen, a wholesome check upon despotic power, and a useful balance wheel in the mechanism of trial by jury. It is a promise that the state will not take advantage of the unfortunate, and it is a guarantee that the prisoner shall have fair play. No such generous rule prevails in Illinois as yet, and it is mentioned here only to throw the light of contrast on the methods employed to secure a partial and prejudiced jury for the trial of the anarchists.

In an editorial reply to the pamphlet, "Was it a Fair Trial?" one of the leading papers of Chicago said that the anarchists got a fairer trial in America than they would have been allowed in England; that in that country they would have been tried speedily, sen-

tenced quickly, and hanged without delay and without appeal. The question was, not what sort of trial the men would have had in London, but was a fair and impartial trial allowed them in Chicago. The comparison, however, may not be altogether unprofitable. It is true that the trial would have been shorter in London than in Chicago, for the prosecuting attorney would not have been permitted to try the defendants for the acts and words of years. Secondly, the defendants would have been granted separate trials as of right. This would have saved the lives of them all, for it will hardly be claimed that any one of them could have been convicted and hanged on the evidence against him alone, separated from the evidence against the rest. Thirdly, they would have had a fair and impartial jury, "drawn at random," from a list of qualified persons selected from "the body of the county." And fourthly, every foreigner among them would have been entitled to a jury, only one-half of which should consist of Englishmen and Irishmen, while the other half should be composed of foreigners like himself. But all this is little to the purpose here. The English criminal practice is not under criticism in this discussion. The alleged wrongs done in the trial of the anarchists are the theme of this debate.

THE SPEECHES TO THE JURY.

It is in the record, and not to be denied that the state's attorney, in his eager zeal for death, broke through the lines of professional etiquette, which the humane spirit of the law has thrown around his office. It is laid down in the books that the prosecuting attorney, like the judge, shall stand absolutely impartial between the prisoner and the state. He must not revile the prisoner, nor insult him. He must not make fact statements in his argument, nor offer to the jury his own opinion on the question of guilt or innocence, because, if he is a popular man in whom the jury have great confidence, his mere opinion may have greater weight than the sworn testimony of other men. All these rules were violated in this case against the protest of the defendant's counsel, and the Supreme Court decides that the "improprieties" were not serious enough to affect the judgment. The Supreme Court of Massachusetts once decided that "a man had a right to quibble for his life." This is true, but it is a ghastly sight to see a lawyer quibble for the death of his fellow-men.

The speeches to the jury were appeals for vengeance on the prisoners. They were anarchy in legal robes, vindictive and crimson as the speeches for which the defendants themselves were tried. The moral discipline of the bar was broken, and the ethics of the profession lowered when the state's attorney condescended to pour angry invective and personal reproaches upon men powerless to reply. The dignity of the legal profession shriveled up when the counsel for the people offered fact-statements to the jury free from the guards and sanctions of an oath, and free from the test of cross-examination. Worse than all, the very genius of advocacy looked mendicant and ragged when the state's attorney begged for a verdict on the niggling plea that the state had no appeal from acquittal while from a judgment of guilty the defendants could appeal for a reversal to the Supreme Court, or to the governor for a mitigation of the sentence. This was almost a promise that a death sentence having served as an example and a warning; the death penalty would not be inflicted. "Gentlemen of the jury, their blood be upon us and upon our children, not upon you." It was illegal for the state's attorney to absolve the jury from any portion of responsibility for the sentence of death.

"The evil that men do lives after them," and whenever a criminal trial becomes historic, the wrongs done in its prosecution by either bench or bar, brand themselves in marks of shame upon the perpetrators. No subsequent greatness, not even the glory of judicial integrity, nor the splendor of intellectual achievement, can erase the livid lines that tell of deep disgrace. They cling like a bar sinister to character, and remain visible so long as the names of the wrong-doers remain visible in history. Lord Coke, the greatest lawyer, and Lord Bacon, the greatest man, that England ever produced, go down to posterity together, branded as vindictive, unfair, and cruel prosecuting attorneys. Lord Campbell, in his life of Coke, halts in his praise of him to say:

> But he incurred never-dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court.

Coke was attorney general, and prosecuted the earl of Essex for high treason in the reign of Queen Elizabeth. Bacon was of counsel with him, and behaved, if possible, worse than Coke. After

Coke had made a speech to the court, full of insult and abuse toward the prisoner, Essex replied :

He playeth the orator and abuses your lordship's ears with slanders, but they are but fashions of orators in corrupt states.

Lord Campbell, further speaking about the trial of Essex, says : "This was a humiliating day for our 'order,' as Bacon covered himself with still blacker infamy, by volunteering to be counsel against his friend and benefactor, and by resorting to every mean art for the purpose of bringing him to the scaffold." By our "order" Lord Campbell means the legal profession, to which he himself belonged, and the time is not far away when every lawyer in Illinois, speaking of the revengeful and unfair prosecution of the anarchists, and the angry speeches made against them at their trial, and the "mean arts" resorted to for the purpose of bringing them to the scaffold, will say : "*That was a humiliating day for our order.*"

Coke was prosecuting attorney at the trial of Sir Walter Raleigh, and "I am sorry to say," remarks Lord Campbell, that "by his brutal conduct to the accused, he brought permanent disgrace upon himself, and upon the English bar."

There is a striking likeness between the manner and words of Coke at the trial of Raleigh, and the manner and words of the district attorney at the trial of the anarchists. In both cases the respective prosecutors poured calumny upon the defendants. "I will prove you the notoriest traitor," said Coke; "These men are traitors," said Mr. Grinnell. "Thou art a monster," said Coke; "Infamous scoundrels," said Mr. Grinnell. "I protest I never knew a clearer treason," said Coke; "These men who have committed treason," said Mr. Grinnell. "Thou traitor," said Coke; "These traitors," said Mr. Grinnell. "I want words to express thy viperous treasons," said Coke; "These men are on trial for treason and murder," said Mr. Grinnell. He then went on to assure the jury that the penalty of treason is death, and that they could not modify it to a term in the penitentiary. "No, it is death," said Mr. Grinnell.

It is difficult to compare two very bad things together, but in comparing those two prosecuting attorneys the superiority is largely on the side of Coke. Sir Walter Raleigh was actually on trial for treason, and when Coke reviled him as a traitor, he was speaking

directly to the charge in the indictment. When Mr. Grinnell told the jury in the anarchist case that the defendants were on trial for treason, he said what was not true. There was no such charge against them in the indictment. The jury, however, acted on the statement of Mr. Grinnell, believing that the state's attorney would not mislead them as to the issues they were sworn to try. It is very likely that some of the jurymen still believe that the anarchists were hanged for treason. This parallel may be continued farther. The fate of Raleigh and the anarchists was the same. Commenting on the case, Lord Campbell says :

Of course, there was a verdict of *guilty*, and the atrocity was perpetrated of ordering him to be executed on this illegal judgment.

In training public opinion to the hanging point, the delusion has been spread among the people of Illinois that a judgment obtained on the verdict of a jury and affirmed by the courts becomes *ipso facto* and *de jure* legal. But law is only a branch of moral science, and the courts of righteousness have jurisdiction over all its judgments to reverse them or sustain them. Nay, tested by a lower standard, the merely human rules established for the protection of the citizen on trial for his life, the judgment against Raleigh was not only unjust, but *illegal*. This is the decision of Lord Campbell, himself a lawyer, and lord chief justice of England. By the unanimous consent of the bar of England, the judgment against Raleigh is reversed. Already hundreds of Illinois lawyers admit that the judgment against the anarchists was *illegal*. Before long it will be reversed as illegal by the unanimous opinion of the bar. Before the tribunal of enlightened conscience the trial of the anarchists must itself be tried, and in that higher court it will surely be condemned.

There is a lofty and humane contrast to all that in a great state trial mentioned in the history of England; the trial of Ashton, Elliott and Lord Viscount Preston, for high treason, in the reign of William III. It is eloquently described in Macauley's fourth volume, and it will bear repeating here.

Early in January, Preston, Ashton and Elliott had been arraigned at the Old Bailey. They claimed the right of severing in their challenges. It was, therefore, *necessary to try them separately*. A considerable number of judges appeared on the bench, and Holt

presided. The solicitor general, Somers, conducted the prosecutions with a moderation and humanity of which his predecessors had left him no example. "I did never think," he said, "that it was the part of any who were of counsel for the King in cases of this nature to aggravate the crime of the prisoners, or to put false colors on the evidence." Holt's conduct was faultless. Pollexfen, an older man than Holt or Somers, retained a little—and a little was too much—of the tone of that bad school in which he had been bred. The prisoners themselves seem to have been surprised by the fairness and gentleness with which they were treated. "I would not mislead the jury, I'll assure you," said Holt to Preston; nor do you any manner of injury in the world." "No, my lord," said Preston, "I see that your lordship would not." "Whatever my fate may be," said Ashton, "I cannot but own that I have had a fair trial for my life."

The condemned anarchists could not say that they had a fair trial for their lives. Their wives and children cannot say so; no friends of theirs can say so; and no enemy who has calmly studied the case. The plea for their death was that they were enemies of society, who might beneficially be destroyed. "Anarchy is on trial," said the state's attorney to the jury, and the verdict was responsive to the appeal. "Vengeance is mine," said Populus, "and I will repay." What matters it whether the seven are specifically guilty of the Haymarket affair or not? They are guilty of anarchy, and for anarchy they are condemned. "For many months," remarks Populus, "they have challenged me to play a game of murder, and I demand all the stakes I have won." There is force in this claim, and good barbarian logic. Had Populus exacted prompt payment through a vigilance committee, criticism would have been light and transient, but, having a choice of tribunals, Populus chose the court house, and was bound by the rules of the forum he selected. When he took his enemies before a jury he promised them a fair trial according to the laws of the land, and by that promise Populus was bound.

THE JURY REQUESTED TO RECONCILE THE INSTRUCTIONS OF THE COURT.

Not only did the jury have despotic power over the evidence, but they were made critics and reviewers of the trial court itself. It was assumed by the Supreme Court that the jury not only had knowledge and wisdom enough to separate good law from bad law, correct instructions from erroneous ones, but, also, that they actually made the separation and acted on the good law and the correct instruc-

tions only. On this, as on other points, the benefit of all doubt is given to the state. The proof of this is found in the decision itself. Here is the language of the Supreme Court, which assumes that the jury had legal knowledge greater than the trial judge, and in discriminating between the right and the wrong did whatever was proper to be done.

As to the first objection, if we construed the instruction to mean what counsel claim it to mean, we would be forced to agree with them that it was erroneous. It is the duty of the jury to consider all the instructions together, and when this court can see that an instruction in the series, although not stating the law correctly, is qualified by others, so that the jury were not likely to be misled, the error will be obviated.

This claim cannot fairly be allowed to one side and denied to the other. The defendants have as good a right to say that the bad instructions qualified the good ones as the prosecution has to say that the good ones qualified the bad. Who shall decide which one of them influenced the jury? How many jurors are competent to analyze a legal mixture composed of good and bad instructions given by the court. Besides, in this case there is an allegation strongly supported that the jury was not impartial, that it was prejudiced against the defendants, and therefore more likely to be controlled by instructions adverse to them than by instructions in their favor.

In that paragraph is an assumption that the jury were competent to consider all the instructions together, and to strike out those "not stating the law correctly;" and it is also conclusively assumed that they did discriminate between the good instructions and the bad. Unfortunately, the sudden agreement on a verdict proves that the jury did not consider all the instructions together, but only those fringed with the sombre embroidery of death.

In another place the Supreme Court says:

Therefore, the instruction *fairly interpreted* means that the persons advised to commit murder were the working men belonging to and acting with the International Group.

There again it is concluded beyond a reasonable doubt that the instruction was "fairly interpreted" by the jury, while the verdict and the swiftness of it are witnesses to the contrary.

Another important instruction of doubtful character the Su-

preme Court holds was made harmless, if not sound, by comparing it with healthier and more legitimate instructions. These "qualified" its meaning and disarmed it. In the language of the Supreme Court:

The instruction is sufficiently limited and qualified when read in connection with all the other instructions to which it especially calls attention. It does not supercede and stand as a substitute for the other instructions given for both sides. It does not so purport upon its face. On the contrary, the jury are directed to carefully scrutinize such other instructions, and are told that their apparent inconsistencies will disappear under such scrutiny.

Is that good law in capital cases? Is it not the duty of the court in trials involving life or death to purge the instructions of all "apparent inconsistencies" before giving them to the jury? If it is claimed that in a trial of eight men together on an indictment of sixty-nine counts, a trial lasting sixty days, the trial court could not possibly scrutinize its numerous instructions so that they would not contain "apparent inconsistencies," how could twelve unlearned men "scrutinize" the same instructions and make the apparent inconsistences "disappear?" There are not twelve lawyers in Chicago learned and skillful enough to perform the feat which the Supreme Court assumes the jury actually performed. The Supreme Court itself is not able to do it. The "inconsistencies" are there; and no extent of scrutiny will make them "disappear." Besides, the evidence is clear that the jury did not attempt to "scrutinize" the instructions except in their most fatal meaning to the men on trial. The Supreme Court continues thus:

In the last sentence the jury are requested to disregard any unguarded expressions that may have *crept into* the instructions which may seem to assume the existence of any facts, and look only to the evidence, etc.

Why was it that the many creeping illegalities that got into the case were venomous towards the defendants? How came it that "unguarded expressions" *crept* into the instructions; expressions that assume the existence of facts? They could not have *crept* in except by fogery. They were put in by the judge. Having put them in he politely "requested" the jury to take them out. Where is the evidence that the jury did as requested? There is none, while proof is abundant that they did not. It was unreasonable to expect that the jury would strike out unguarded expressions which

assumed the existence of facts, after the judge himself had deliberately put them in, and why is it that in all this voluminous case no unguarded expressions "*crept in*" which assumed the existence of facts favorable to the accused? Why is it that the benefit of every doubt is given to the state, while the defendants must bear the evil consequences of every mistake made by the state's attorney and the judge?

THE INVERTED LOGIC OF THE COURT.

Never before, except in burlesque, was the meaning of words reversed as in the anarchist trial. Logic stood on its head, and reasoned with its heels. Facts absent from the theory of the prosecution were solemnly claimed as evidence to establish it. It was averred that *if* certain events had happened which did not happen, they would have shown that the conspiracy and the tragedy were cause and consequence, therefore the connection is proved. This is not meant for ridicule, and its grotesque appearance is merely the shadow of the Supreme Court tracing the crime back to the conspiracy. It is the language of the opinion itself that throws sarcasm upon the decision. Here is the claim of the Supreme Court:

The mode of attack as made corresponded with the mode of attack as planned.

And here is the inconsequent reasoning by which that claim is supported:

The Desplaines Street Station was in sight of the speaker's wagon, and only a short distance south of it. *If* a bomb had been thrown into the station itself, and *if* the policemen had been shot down while coming out, a part of the conspiracy *would have been* literally executed just as it was agreed upon.

By reasoning upside down in that fashion the tragedy in the Haymarket is connected with a conspiracy that was *not* carried out, and seven men vaguely and remotely identified with said "conspiracy" are connected with a bomb thrown by "a person unknown," and who is not shown to have had any association whatever with the seven men, nor any connection at all with the so-called conspiracy. The Supreme Court itself virtually rejects the theory that Schnaubelt threw the bomb, for the more comprehensive drag-net theory that it was thrown by "some person to the jurors unknown."

The conspiracy which the prosecution attempted to show on the trial, and which it is pretended they did show, was not carried into execution in any of its essential details. As illustrated and explained by the Supreme Court itself, it was a conspiracy that aimed at a social and political revolution. Hundreds, aye, thousands of men were engaged in it. It was to begin by the throwing of bombs into the North Avenue Station and into other stations in the city. Well drilled men, armed with rifles, were to be stationed outside to shoot the police as they came out; then the conspirators were to march inwards toward the heart of the city, destroying whatever should oppose them; the telegraph wires and the hose of the firemen would be cut, and the reign of anarchy begin. Nothing of the kind occurred; nothing of it was attempted; nothing of it prepared for, except the making of bombs by Lingg.

According to the conspiracy relied on by the prosecution, many men should have been engaged in it, and many bombs thrown. In fact, only one bomb was thrown, and that by an unknown man. This disproves that conspiracy, and tends to show that the bomb-throwing was the revengeful act of one man alone. There were no armed men with rifles anywhere, and the claim that pistols were fired by the mob is disputed by strong evidence. Every essential detail of the alleged conspiracy was absent from the tragedy, and for want of the necessary facts a scaffold was built of "if" and "would have been."

"*If* a bomb had been thrown into the station, and *if* the policemen had been shot down while coming out, a part of the conspiracy *would have been* literally executed.

And therefore men must die for a conspiracy which was not executed, but which *would have been* executed *if* something which never happened had been done; a conspiracy, of which if it even existed, some of the condemned men could not possibly have had any knowledge. And thus the evidence in the case overwhelmingly proves that the mode of attack as made corresponded *not* with the mode of attack as planned.

Had the indictment been simply for a conspiracy punishable by fine and imprisonment, the prosecution would have been held down to clear and definite allegations with which the evidence would have been compelled to correspond. As it was, the heavier crime of murder was permitted to rest upon an undefined and shadowy charge

composed of opposite and contradictory ingredients. The so-called conspiracy, instead of being a substantial accusation based on fact-averments on which issue might be taken, was nothing but a claim growing out of a mass of incoherent running testimony, and shifting day by day. The conspiracy was a remote cloud changing its form continuously in obedience to the changing winds of evidence. One day it was like a weasel, the next it was backed like a camel, and at last it was "very like a whale."

Allowing the so-called conspiracy the exaggerated form given to it by the state's attorney, the parts of it were so remote from each other, and from the defendants respectively, that no criminal relationship could ever be established between them. The details of it could never have been set forth by specific averments in an indictment. It was a huge pretense, composed of incoherent stories and contradictory evidence. It was a constructive conspiracy which could not have stood alone in any civilized court, and yet it was held good enough to sustain a charge of murder and the conviction of eight men. The suspicion already weighs like a nightmare on the people of Illinois that men were hanged in Chicago for metaphorical treason under an indictment for inferential murder. It must ever be a reproach to the memory of Governor Oglesby that in his administration the illegal doctrine of constructive murder and collateral guilt was affirmed by death warrants carrying on their faces the sanction of the great seal of Illinois.

The dangerous theory of implied complicity was extended over the miscellaneous words and deeds said and done by eight men during sixteen months of their lives. Yea, it was stretched to New York city so as to include the lurid threatenings of a book which some of the defendants had never read; a book written by a man who was not on trial at all. A private conversation had in Michigan some time in February, 1885, between Spies and a friend, was given in evidence against Lingg, who was then in Germany, and against six other men who never heard a word of it, nor knew anything about it until it was given as testimony at the trial. This conversation itself, even if correctly remembered, was nothing more than a general expression of revolutionary speculations. To introduce it against Spies himself was unjust; to introduce it against the others as evidence of a conspiracy to murder, was an act of oppression. The Supreme Court pretended that although it was im-

proper to introduce the conversation as evidence against any of the defendants except Spies, it did not injure them. How did the court know that? All the testimony was thrown into a sort of hotch-pot, and the jury used the whole of it against every man on trial. The decision of the Supreme Court contains many expression like these: "The defendant, Spies, in a speech made in October, 1885, said." "In speeches made by him, the defendant Parsons said in February, 1885." "And in August, 1885, he said." "The defendant Fielden, in speeches made by him in March, 1885, said." "In October, 1885, he said." "He said in December, 1885." "He said in January, 1886," and so on. It was not shown that the other defendants heard those speeches or knew anything about them; nor was it shown that the speeches had any reference to the future tragedy in the Haymarket. They were violent political harangues publicly made, and of a denunciatory character. This is conceded by the Supreme Court in the following statement:

All the evidence shows that the day fixed for the inauguration of of the "social revolution" was the 1st of May, 1886.

This doctrine of cumulative responsibility, joint and several, is worthy of a reign of terror. Under it, not only freedom of public speech will be destroyed, but freedom of private speech also. Social confidence will disappear, and no man will dare to utter his political opinions in conversation with his neighbor. Lord Holt rebuked it on the trial of Harrison for murder. The counsel for the prosecution calling a witness to prove some felonious design of the prisoner three years before, the judge indignantly exclaimed:

Hold, hold! What are you doing now? Are you going to arraign his whole life? How can he defend himself from charges of which he has no notice? And how many issues are to be raised to perplex me and the jury? Away, away! That ought not to be; that is nothing to this matter.

At the trial of the anarchists a multitude of charges was produced against them of which they had no notice, and a profusion of issues was raised to perplex the jury and the judge.

THE SHARP CASE.

The first judicial satire on the anarchist case comes from the state of New York. The decision of the New York Court of Appeals in the Sharp case, throws ignominy upon the Supreme Court of Illinois. A few bits of improper testimony were admitted on the

trial of Sharp, and because of them the Court of Appeals reversed the judgment against him. Similar errors, but greater, and fifty times more numerous, were sustained by the Supreme Court of Illinois; and giving those errors judicial consecration, that warped tribunal condemned seven men to die. Men were hanged in Chicago despite of illegalities greater than those which in the state of New York vitiated a mere sentence of imprisonment. It was claimed by the prosecution in the Sharp case, as in the anarchist case, that granting the illegality of the testimony complained of, there was evidence enough outside of it to justify the verdict. The Court of Appeals disallowed this claim for the reason that even if well founded it would not legalize the verdict, because perhaps the illegal testimony was the convincing evidence that prevailed upon the jury.

The mischievous heresy of cumulative responsibility in several defendants for the separate actions of each other, and the Illinois absurdity of tacking one man's crimes to another man's defense, could not obtain any recognition from so enlightened a tribunal as the New York Court of Appeals. The Illinois pretense that offenses multiply themselves by the rules of geometrical progression according to the number of persons implicated, was treated with derision by that court. The unwarranted conceit that the separate acts of Miller, Phelps, Keenan, Moloney and DeLacey, were parts of the "original conspiracy," done "in furtherance of the common design," was rejected by the Court of Appeals. A man may not be able to explain or defend the actions of another, while he may be able to defend and explain his own.

It has been said that the Sharp case does not offer a proper contrast because Sharp was a millionaire, and therefore ineligible to the penitentiary. It is claimed that had the anarchists been rich the errors in their case would have reversed the judgment. This does not weaken the present argument; it is merely a repetition of the familiar truism that capital punishment has been abolished in Illinois except in the case of the poor.

THE STATE CONFESSES AWAY THE CASE.

"Thine own mouth condemneth thee; yea, thine own lips testify against thee." This reproach is fastened upon the state's attorney, and the judge who tried the anarchists. Their own lips testify

against them. They pleaded with the governor to respite Fielden, and their prayer is an indictment against themselves; an indictment more terrible than the snare with sixty-nine dead-falls which they set for the anarchists. To hang Parsons and spare Fielden was illogical, and the reasons given for the anomaly change the execution of Nov. 11 into a sacrifice, a punishment into a martyrdom. Judge Gary and Mr. Grinnell begged clemency for Fielden on the ground that the evidence did not justify the verdict and the sentence. The evidence that convicted Fielden convicted the others, and the argument for him applies to all.

In Judge Gary's letter to the governor he says:

THERE IS NO EVIDENCE that Fielden knew of any preparation to do the specific act of throwing the bomb that killed Degan.

This astonishing statement is indorsed in writing by Mr. Grinnell. It is a remarkable act of self-stultification, because Judge Gary, when asked at the trial to instruct the jury that such evidence was necessary in order to convict a man of murder, refused to do so. It is more criminating still because Judge Gary began his letter by referring the governor to the decision of the Supreme Court for "a history of Fielden's crime." This was an ungrateful return for the leniency shown by the Supreme Court to the mistakes made by Judge Gary at the trial. His assertion that there was NO EVIDENCE that Fielden knew of any preparation for the bomb throwing is a sardonic censure of the decision itself, because the Supreme Court laboriously tries to show *from the evidence* that Fielden did know about those preparations, and that he was the very man who gave the signal to throw the bomb. The court dwells upon the evidence that Fielden began the affray by firing into the ranks of the police, and they note especially the testimony of six men who swore positively that they saw Fielden shoot at the policemen. The court also sneers away the testimony of six other men who swore they did not see him fire. The Supreme Court was deceived as the jury was deceived by the cunning suggestion that the word "peaceable" used by Fielden just before the bomb throwing, was the English equivalent to the German word "Ruhe," said to be the signal cry agreed upon to rally the armed sections whenever it should appear in the *Arbeiter Zeitung*. Some other suspicious acts of preparation performed by Fielden on Tuesday night, and previously, are heavily

referred to by the Supreme Court in its "history of Fielden's crime."

The evidence against Fielden was far more deadly than the evidence against Parsons and the others. False, twisted and ambiguous though most of it was, it brought him closer to the bomb-throwing than any of the rest, both in word and deed. That Spies lighted the fuse is no longer believed by anybody. In fact, it was from Fielden that the prosecution traced its threads of circumstance to the "co-conspirators." With the evidence against Fielden gone, there is little or nothing left to implicate some of the others, and especially Parsons. They were hanged on the theory that they were Fielden's accomplices. Unless the state's attorney can tie them to Fielden, he cannot connect them with the crime at all. If there is no evidence to sustain the charge of murder against Fielden the punishment of Parsons has no legal support. Convinced of that, the Supreme Court devotes more attention to Fielden than to any of the others, and with weary travail tries to fasten upon him a direct agency in the killing of Degan.

When did Mr. Grinnell discover that there was "no evidence" of guilty knowledge against Fielden? Judge Gary may have discovered it as soon as he found time to take a calm review of the trial. But when did Mr. Grinnell find it out? Months after the trial, he pleaded hard before the Supreme Court for Fielden's death. Did he know then that Fielden was an innocent man? If not, when did he first suspect it? At the March term, 1887, in his brief and argument before the Supreme Court, Mr. Grinnell contended strongly for Fielden's guilt. He dwelt long and earnestly upon Fielden's preparations. In order to give some legal color to the action of the police, he asserted that Fielden's inflammatory appeal to the crowd to "kill the law," to "stab it," to "throttle it," was reported to the police inspector, and because the crowd had become excited by Fielden's oratory, the police were marched up to the meeting. He dramatized the tragedy and made Fielden the principal actor in it. "Here come the bloodhounds," said Fielden; "you do your duty and I will do mine." Mr. Grinnell tried to show the connection between Fielden's word "peaceable," the instant throwing of the bomb by somebody else, and pistol firing by Fielden. Said Mr. Grinnell:

Before the police appeared Fielden made a speech not only inflammatory and incendiary in character, but actually seditious and

treasonable. This speech was a direct encouragement to do the very act which was done that night.

That is the way Mr. Grinnell addressed the Supreme Court in March. In November he joins with Judge Gary in saying to the governor of the state "There is no evidence that Fielden knew of any preparation to do the specific act of throwing the bomb that killed Degan." Then, of course, Fielden could not be guilty of the murder of Degan by the throwing of that bomb.

The dark suspicion must ever rest on Mr. Grinnell, that he knew Fielden was innocent, just as well in March, when he was pleading to the Supreme Court for the unfortunate man's death, as he knew it in November, when he was pleading to the governor for his life. His confession converts the whole trial and its fatal catastrophe into a cob-web of solecisms, entangling judge, jury, counsel, the Supreme Court, and the governor.

If Fielden is innocent of murder, why is he imprisoned in the penitentiary; and why was Parsons hanged? Truly, there must be guilt somewhere. The Supreme Court makes Parsons guilty on the ground that he was present at the Haymarket meeting and spoke. The court acknowledged that he was in Cincinnati on Monday, and knew nothing at all about the pretended conspiracy claimed to have been formed that night. It was conceded that the speech of Parsons was moderate in tone, that he had his wife and children with him, that he left before the arrival of the police, did no pistol shooting, gave no signal, and was not present when the bomb was thrown. But he was present at the meeting in company and association with Fielden, and thus adopted the "conspiracy" of Monday night, although he never knew a word about it. He was Fielden's accomplice, and for that he was hanged. After the acknowledgment made by Judge Gary and Mr. Grinnell, there is literally nothing left against either Fielden or Parsons, except revolutionary rant, and a sanguinary newspaper. Seditious writing and inflammatory speech are not murder, but capital punishment inflicted upon men for either offense, *is* murder.

Offended justice sometimes takes revenge in a grotesque and comical way. In this case it uses Judge Gary and Mr. Grinnell to draw black lines around the notorious decision which condemned seven men to die. The long tragedy of errors enacted by Judge Gary and Mr. Grinnell is honored in all its mockery of law by the

approval of the Supreme Court. Through a labyrinth of cross-roads and by-ways, the Supreme Court tracked Fielden from February, 1885, to May, 1886, and contended that every step he took was a preparation for the throwing of the bomb. Though most of it was obviously false, the Supreme Court accepted all the testimony against Fielden as true, and called it "*proof*." Such parts of the play as it could not approve it excused, and triumphantly claimed that under the evidence Fielden was properly convicted of murder in the first degree. Now come the chief actors in the awful drama, and pointing to the decision of the Supreme Court for a "history of Fielden's crime," declare "there is no evidence that Fielden knew of any preparation to do the specific act of throwing the bomb that killed Degan."

THE TRIBUTE OF PRAISE TO FIELDEN.

Judge Gary in his appeal for Fielden describes him as "an honest, industrious, and peaceable laboring man," having "a natural love of justice" and "an impatience at all undeserved suffering." He also says that Fielden "was more a misguided enthusiast than a criminal." He also testifies that "in what Fielden said in court before sentence he was respectful and decorous." Mr. Grinnell adopts this tribute and says that Fielden's address "was decorous, respectful to the law, and commendable." There is more self-condemnation in this praise than the judge or the state's attorney suspected when they gave it. Fielden's address is a terrible arraignment of them and their methods. Excepting Robert Emmett's death speech in which he rebuked Lord Norbury, there is nothing equal to it of its kind. The famous reply of Thomas Francis Meagher, when asked why sentence of death should not be passed upon him, although more polished and stately, is not so "strong in honesty," so bold in utterance, so truthful in assertion, so convincing in denial, so pathetic in statement, and so manly in justification of his motives, as the speech of Samuel Fielden in answer to the same question. Fielden's withering prophecy is equal to anything in the speech of Emmett. Solemnly addressing Judge Gary and Mr. Grinnell, he said:

We have been tried by a jury that has found us guilty. You will be tried by a jury now that will find you guilty.

Mr. Grinnell certifies in writing to the governor that Fielden's

accusatory warning is "commendable," and in that sentiment Mr. Grinnell is right. The trial is now going on and the prophecy will be fulfilled. If this man is "more a misguided enthusiast than a criminal," why is he doomed to spend his life in the penitentiary?

In his "commendable" speech, Fielden was not at all timid in criticising the unfair tactics employed by the prosecution. It must have surprised Mr. Grinnell to hear so much good law from the lips of an unlettered and ungrammatical teamster. Reading the speeches of the teamster and the state's attorney, it is easy to see that in the art of law the lawyer was far more skillful than the teamster, while in the science of law the teamster was greatly superior to the lawyer. It must have come to the teamster by moral intuition, for he never could have studied the books, that law has its roots deep down in the eternal principles of truth and honesty; and therefore whatever contradicts or opposes these is probably not law. For instance, he thought that the evidence in the case ought to correspond with the allegations, and be confined to the issues made by the plea of not guilty. The attorney thought not. In this difference of opinion the law was with the teamster, and against the lawyer. So again, the teamster thought that the trial ought to be confined closely to the charge in the indictment and not be directed to the miscellaneous accusations wandering about the streets. The attorney thought otherwise; and here, also, the teamster had the law, and the lawyer had it not. Again, the teamster thought that a false issue should not be substituted for the true one before the jury. The attorney disagreed with him; and in this dispute likewise, the law was on the side of the teamster. The lawyer's art is literally overpowered by the simplicity of the teamster's astonishment at the legerdemain by which one issue was substituted for another. Referring to his indictment for murder, he said:

I answered that charge in this court. My attorneys in my behalf met that charge; we brought evidence to meet and rebut the charge of murder. After all our evidence was put in, after all the speeches had been made on both sides, with the exception of one (the closing speech of the state's attorney) we were suddenly confronted with the fact that the charge of murder had not been proven. When all the witnesses had been heard I am suddenly told that I am being tried for "anarchy." *If I had known that I was being tried for anarchy, I could have answered that charge.*

The unconscious irony in that statement cuts like a sword; and

the legal right of a prisoner to know specificially what he is being tried for is expressed in the last sentence as truthfully as Marshall, Story, or Mansfield could have said it. Further on, addressing Mr. Grinnell personally, the teamster gave him another lesson in good law. He said:

The duty of a prosecuting attorney is to see to it that no guilty man shall escape if he can possibly prevent it. It is also his duty to see to it that no innocent man shall suffer for any crime.

Mr. Grinnell may not have got so far as that in his legal studies, but when the teamster spoke those words to him he spoke the law. Still addressing Mr. Grinnell, the teamster said:

Lawyers have a peculiar code of morals. Their success in their particular avocation depends upon their gaining suits. And I am afraid there are lawyers to be found who care little whether their suit is right or in the interest of justice and truth, so long as they can gain their case and make a reputation for themselves.

That is part of the speech which Mr. Grinnell told the governor was "decorous, respectful to the law and commendable." It is to be regretted that Fielden cannot return the compliment, for it would be gross flattery to say that Mr. Grinnell's address to the jury was decorous, commendable or even respectful to the law.

It is a vulgar error that the fantastic tricks played in the courts by lawyers of inferior caste are law. They are not law. They are simply adulterations like sand in sugar, or chalk in milk. In trials of serious moment they may become felonious assaults upon the law, a branch of that social destruction called anarchy. The right of an accused man to be tried by a fair and impartial jury of his peers is as much a part of our system called government as any other feature of it. An infringement of that right by men clothed in judicial ermine is as much a deed of anarchy, an attack upon the government, as is an infringement of the right of property by men clothed in rags. There are practitioners at the bar, well skilled in the mechanism of their profession, who are totally innocent of the science of the law. They know the forms of the law, but the spirit of it they have not the *moral* sense to comprehend. They are like the blacksmith who thinks he must be a veterinary surgeon because he knows how to nail bits of iron upon a horse's feet. There is a curse pronounced in the bible against him "who taketh a reward against the innocent," meaning, no doubt, the lawyer who,

for a fee, prosecutes an innocent man, or defends the wrong side of a cause.

All is not gold that glitters; all is not law that punishes. The vindictive sentence of a court, ratified by the chief magistrate, may be only an official form of anarchy, a trespass on the government. Law is a plan of justice, and even the statutes of the land may be hostile to the law. The Illinois statute of conspiracy is an invasion of the law, a despotic scheme to abolish the great charter of American liberty. True, men may be imprisoned by its authority, and even hanged by the executive strength behind it, but after all, it is not law. It is physical force anarchy. The so-called fugitive slave law was misnamed. It should have been called the fugitive slave statute. People are now living who remember when the man who would not obey it was not a good citizen. It is now agreed by everybody that the man who did obey it was a bad citizen. Its advocates have all passed into obscurity or contempt. When Fielden, the teamster, informed the state's attorney that the constitution prohibited restriction of speech or of the press, he gave him a lesson in law for which he ought to be grateful. It was an act of kindness, "decorous and commendable." Although that part of the constitution has been repealed in Illinois, the act of repeal is void. Anarchists may sit upon the Supreme bench, as upon a cobbler's bench. When judges sworn to declare the law give judgment against the law, they are anarchists and their decrees are anarchy.

THE SUPREME COURT AS PROSECUTOR.

It would be a "tiresome" task to analyze the opinion of the Supreme Court, and show its prosecutor style of argument. Everything is taken for granted against the defendants and in favor of the state. The opinion itself is greatly indebted to the prosecutor's brief, both for its diction and its law. A few specimens of it have already been given; a few others may be added; and from those examples the character of the whole opinion may be judged. Be it remembered that much of the testimony relied on by the Supreme Court was untrue; much more of it was strongly disputed both by its own inherent improbability, and by good, reliable, and affirmative evidence against it. By judicial alchemy, all testimony for the state becomes transmuted into "evidence," and all "evidence" is converted into "proof." By the inverse process, all proof made by the

defendants is changed into inferior evidence, and that again into worthless testimony. The burthen of proof is taken from the state and the presumption of innocence from the accused. For example, there was no evidence that Spies had answered the Most letter, yet the Supreme Court assumed the fact conclusively against him. Spies was examined on the question and said that he could not remember whether he had answered it or not. This was probably the truth, for he might have denied positively that the letter was answered. The effect of this testimony, which ought to have counted in favor of the prisoner, was turned against him by the Supreme Court in the following clumsy way:

He doesn't say that he didn't answer it, but that he doesn't remember whether he answered it or not. We do not think, however, that it can be regarded as an unanswered letter. To all intents and purposes it was answered.

A letter found in a prisoner's desk is either an answered letter or it is not. The burthen of proof that it was answered is on the state. The prisoner is not bound to prove the negative. That it was answered "to all intents and purposes" is illegal guess work. When a court relieves a prosecutor from the burthen of proof by such uncertain reasoning, the judges plead the cause instead of judging it, "to all intents and purposes."

In another place the Supreme Court conclusively assumes that one man must have heard what another one said at a riotous meeting where hundreds of men were fighting, and where some of them were killed and wounded by the police. Hear the court:

He was present on the afternoon of May 3d, 1886, at the attack of a mob of strikers upon a manufacturing establishment in the southwest part of the city, and *must have heard* the address of Spies on that occasion.

Dubious testimony for the state is given generous welcome by the Supreme Court and treated with high respect, while the most positive proof in favor of the accused is grudgingly admitted, and then with affected misgiving and doubt. For instance, it is entirely undisputed that Engel was not present when the bomb was thrown, a circumstance which tells fearfully against his conviction. This fact is conceded by the Supreme Court in this unwilling way:

The evidence *tends to show* that Engel was at his home on

Milwaukee avenue, near the Haymarket, when the explosion occurred.

There was no "tends to show" about it; the evidence did show it, and there was no pretense to the contrary. Worse yet, an obscure sentence is framed by the court to cover an unfair insinuation of guilt, or at least of proximity to it. It is unworthy a high tribunal to palter with phrases of double meaning. Does the court mean that Engel's home was near the Haymarket, or that Milwaukee avenue is near the Haymarket? An important matter, because one end of Milwaukee avenue is only a few blocks from the Haymarket, while the other end of it is three or four miles away. Why was the phrase "near the Haymarket" wedged into that part of the opinion? It must have been to implicate Engel by a suggestion of his proximity to the tragedy. It is in suspicious contrast that "*the proof shows*" is a phrase never used to describe the case for the defendants. Wherever it occurs it is descriptive of testimony favorable to the state.

Engel's home was actually a mile from the Haymarket, and he was sitting there drinking beer in a social way with friends when the bomb was thrown. What matter? Evidence put to the torture will give any answer desired. Presence and absence stretched on the rack by the Supreme Court of Illinois both answer, guilty. Parsons was hanged for being present, and Engel for being absent. Provoked by the perverse fact of Engel's absence, the court, instead of crediting him with it, debits it against him thus:

> That some of the conspirators might be at home when the collision with the police should happen was a contingency that was provided for by the terms of the plot; in the event of a collision at night a committee appointed to watch the movement was to report to the armed men at their homes.

With discreditable obstinacy the facts refuse to agree with that unreal speculation. Nothing of the sort followed; and as for Engel, the witness for the state against him acknowledged that when he heard of the throwing of the bomb he said, "The man who threw it did a very foolish thing," and advised his friends and the informer also to go home.

The habit of paltering in a double sense grows upon the court. It is mere cunning, not intellect. It argues by hint and innuendo,

as in the plea against Neebe, making him directly responsible for the *Arbeiter Zeitung;* the court says:

This paper was owned by a corporation in which Spies, Schwab, Fischer and Neebe were stockholders.

The corporation was the Socialistic Publishing Company, and the statement of the court, while literally exact, is pregnant with a hint that Neebe was directly the owner of the *Arbeiter Zeitung*, and a stockholder in the usual meaning of the word; whereas, he was only remotely a stockholder by reason of membership with hundreds of others in the Socialistic Publishing Company. Neebe held stock in the "corporation" to the amount of five dollars, as all the other members did. Thus the statement of the court, while literally true, makes a false impression. A little further on the disguise is thrown off altogether, and the insinuation against Neebe becomes a positive accusation, thus:

Neebe was one of the stockholders of the *Arbeiter Zeitung.*

Conceding the suggestion to be fact, a stockholder in a newspaper is not criminally liable for its articles. The Supreme Court was curiously wrong in supposing that the fact of owning stock in a newspaper is valuable evidence against a man accused of murder.

Important issues in dispute are coolly decided against the prisoners on "the weight of evidence," as if the whole business were a civil suit for twenty dollars or so, instead of the trial of eight men for murder. Says the court:

The *weight of evidence* is in favor of the conclusion that Degan was killed by some member of the International Association.

And in another place the court remarks:

We think the *weight of evidence* is in favor of the state upon this subject.

All that apologetic plea for "the weight of evidence" is lawyer's jargon unauthorized by the rules of evidence in capital cases. In a matter of life or death the weight of evidence on all material issues should be heavy enough to amount to moral certainty in favor of the state, otherwise the benefit of the doubt should be given to the defendant. The truth is that the scales used by the Supreme Court for weighing the evidence were lop-sided and partial; the result was a wrong that never can be righted in this world.

There is no cohesion or affinity between the numerous impossi-

ble "conspiracies," imagined by the Supreme Court; nor is there any logical connection between their several parts. From the beginning to the end of the record that changeable conspiracy on which the scaffold rested never appears in any legal shape that may be identified; and whenever for a moment it seems to take visible form, it instantly vanishes again, because it will not fit the evidence made for it. The Supreme Court is continually dropping one conspiracy and picking up another, then dropping that and picking it up again. After laboring through pages of argument to show a conspiracy growing out of the separate actions of eight men for sixteen months of their lives, the court abandons it, and picks up the brand new conspiracy of May 3d, and when that also refuses to correspond with the catastrophe, the court absurdly lays the blame upon the defendants, who were too perverse to carry out the conspiracy invented for them by the Supreme Court. Compelled to admit this disagreement, the court is reduced to the extremity of explaining it thus:

Special action of the authorities may have operated to change the original conspiracy.

So the original conspiracy was changed, and a secondary affair substituted for it, of which no definite specifications have ever been set forth. As the crime of murder could not be brought home to any of the defendants, the humiliating confession is made at last that they were hanged for anarchy; or, in the funny language of the Supreme Court, for their "queer doctrines." The court itself often loses the murder, and forgets all about it in its gratuitous reprobation of anarchy. No wonder that thousands of people in Illinois believe that anarchy was the crime charged in the indictment. The false and misleading issues raised by the indictment in order to bring men to the scaffold were truthfully described by Lyman Trumbull, a lawyer and statesman of national fame, a man by no means partial to the anarchists or their principles. He said:

I am not altogether satisfied with the manner in which the trial of the anarchists was conducted. It took place at a time of great public excitement, when it was about *impossible that they could have a fair and impartial trial.* A terrible crime had been committed which was attributed to the anarchists, and in some respects the trial had the appearance of *a trial of an organization known as anarchists*, rather than of persons indicted for the murder of Degan. Sev-

eral of the condemned were not at the meeting where the bomb was thrown, and none of them, as I understand, was directly connected with the throwing.

Some abstract principles relating to conspiracy and some general doctrine concerning accessories, are correctly stated by the Supreme Court, but this is a familiar artifice common at the bar. Advocates get along with it finely until some logical judge requires them to fit the axioms to the case on trial. Then they fail, as the Supreme Court of Illinois fails to make its law fit the facts in the anarchist case. That accessories to a crime are equally guilty with the principal may be good law, but it does not follow that all the principal's cousins are accessories with him because of consanguinity, nor that men are accomplices with him because they belong to the same lodge, church or association. Yet this was the fallacy of the court. Evidence that would never have been allowed to prove men partners in a fifty-dollar contract was held competent to prove them partners in the crime of murder.

THE REPEAL OF THE CONSTITUTION.

English history is blurred with tales of political persecutions dignified as trials for treason, murder, and conspiracy to murder. The judgment of posterity upon them is that those trials themselves were judicial and executive conspiracies to murder the defendants. Rarely now do historians speak of the execution of Algernon Sidney. They tell of his "murder." So they tell us about the murder of Russell, of Raleigh, of More, and Alice Lyle, yet those murders were all done by the government; judges gave the law, and juries gave the verdicts against the defendants in every case. Shall we have in the United States a parallel history? It is very significant that the charge of murder against the anarchists was abandoned the very moment the drop fell on the 11th of November. The false expedient had served its purpose and was then dropped. Even the very newspapers that flogged the passions of the people up to madness never speak of the anarchists as murderers, nor of their crime as murder. They always speak of the men as anarchists, and of their crime as anarchy. There is method in this, because death for anarchy contains more warning in it than death for murder. It strikes more terror to the multitude. It is more novel and picturesque; more comprehensive, too, because a mere strike for more wages and

less hours, a meeting, a picnic, a procession, a trades union, a public speech, or a private conversation, may each and all be anarchy according to the precedent set by the Supreme Court of Illinois. Nobody compliments the governor, the Supreme Court, Judge Gary, or Mr. Grinnell for hanging men for murder. There is no special merit in that. They are praised because they strangled men to death for anarchy. The public flatteries and rewards are bestowed upon them because of the popular belief that those magistrates, in their zeal to stamp out anarchy, trampled on the law, and violated the national constitution and the constitution of the state. It is not for upholding the law, but for overthrowing it, that the popular applause is given.

It is a bad precedent, the beginning of "coercion" for Illinois. It is the old muzzle, borrowed from the antiquities of Europe, and placed on lips and type in Chicago. It has already demoralized our officials and imposed upon them the duty of tyranny. The mayor of Chicago, when he repealed the constitution of the United States, and suspended the bill of rights, was merely obeying the wishes of his constituents. When he abridged the freedom of speech, when he "proclaimed" certain districts, when he proscribed certain music, when he tied up public meetings, was not exercising personal despotism, for which probably he has no taste. He was only enforcing the despotic will of the "classes" against the "masses" of Chicago. When he limited the freedom of the people called anarchists, communists, and socialists, he was only yielding to the dictation of those who elected him to office. Indeed, if he had outlawed them as the clan McGregor was outlawed in the olden time, his action would have been sustained.

Only last spring the mayor of Chicago and the governor of Illinois denounced from the same platform the "coercion" policy of Great Britain. Before the end of the year they had become the chief coercionists of America. This is sometimes called the "irony of fate," but they are only the victims of popular unreason, not its authors. The coercion policy which takes away from the people the right of speaking, printing and meeting, is a feeble security for public order; because when the people feel that the law is for their correction, and not for their protection, they will not protect the law. When they see their magistrates dishonor the law, they will evade it if they can. The history of Europe shows that resistance to

government restraint and political discipline has generally been greater than the act resisted. The square of the coercion expresses the quantity of resistance to it. We may plug up Vesuvius, but the pent up fires will split the earth open somewhere else. When the mayor of Chicago dictated what music should be played, and what should not be played at the funeral of the anarchists, he was answered by a song of defiance right from the coffin of Parsons. When the procession turned into Fifth avenue, and came within hearing of the City Hall, the band marching behind the hearse struck up "Annie Laurie," the song that Parsons sung in the condemned cell the night before his death. It rang through the council chamber, and mocked the feeble, foolish "proclamation" of the mayor. It recalled to memory the taunting menace of 1859:

> And old Brown; Osowattomie Brown,
> Will trouble you more than ever,
> When you've nailed his coffin down.

When the mayor forbade the tune he exceeded his authority; he overstepped the law. And when he failed to enforce his order, his office lost dignity to the extent of the disobedience to his decree. He should not have made any order except a legal order, and that he should have enforced at all hazards.

When the judges of England held their offices at the pleasure of the king, they declared the law, not as it was, but as their master wanted it to be. When prosecuting attorneys aspired to the bench they earned promotion by falsifying the law to please the sovereign. By "mean arts" and illegal devices they sent political enemies to the scaffold and to prison. The judges are free in England now, and the law can no longer be perverted to the uses of the crown. In the United States the judges hold their offices at the pleasure of the sovereign people, and those judges must declare the law, not as it is, but as their master wills it. When King Populus is in the humor he can be as bigoted, irrational and despotic as any King Henry, King James, or King George. When King Populus gets drunk his judicial servants must make the law drunk too. When he demands a bloody sacrifice they must provide the victims. He can exact illegal judgments from his courts of law with as much intolerance as any king of England ever did. So, too, he wraps comfortable robes of ermine around the law officers who pervert the law to gratify his rage. How interesting the resemblance between the

judical appointments of King James, two hundred years ago, and the appointments of King Populus to-day! Already Judge Gary has been rewarded with another term of office, and Mr. Grinnell has been promoted to the bench. The judges of the Supreme Court will be re-elected also, if the election comes on soon; if late, King Populus may be sober and they may receive reprimand instead of robes, as Hubert received reproaches from King John for doing the very deed that the king bribed and commanded him to do. Populus is a fickle king, and he has qualms of conscience too, as other kings have had. Let the ministers to his wrath claim a quick reward or they may lose it altogether.

THE SWIFT VERDICT.

The swift and eager verdict of the jury in the anarchist case justifies all the censure which has been cast upon the trial. They were out only three hours altogether, and most of that time was occupied in fixing the punishment of Neebe. The trial had lasted eight weeks, the indictment contained sixty-nine counts; there were eight men on trial; the evidence amounted to volumes of all sorts of testimony, some of it applying to one of the prisoners, some of it to another, some of it to two or three of them, and scarcely any of it to all of them. The instructions of the court were numerous and intricate, requiring careful discrimination in the reading of them; and the offense charged was murder, committed by the explosion of a bomb which it was conceded none of the defendants threw. It is hardly possible that the jury could have read the instructions at all, certainly they could not have compared them with the testimony. They could hardly have read the indictment in three hours, and they could not have reconciled its contradictory counts in three years. They certainly never attempted to separate the evidence against one from the evidence against the others. They simply applied the whole of it to each of the defendants and found them all guilty of murder in the first degree. It was the easiest thing to do, for their brains were all rumpled and disordered by the mysteries of collateral guilt and clairvoyant combination to kill.

Perhaps also the jury thought that whatever might be wrong in the verdict would be corrected by more learned men than they. They had a right to think so, because the state's attorney had said to them that from their verdict the defendants could appeal to

higher authority for a new trial. Before the Supreme Court he turned another somersault and begged for an affirmation of the judgment on the ignoble ground that a second conviction could not be obtained.

ACCESSORIES PRESUMPTIVE.

The theory of anarchy and the scheme of socialism, whether good or evil, can have no place in a trial for murder except to create prejudice in the jury, yet the Supreme Court of Illinois held that,

Whether or not the defendants were anarchists may have been a circumstance to be considered in connection with all the other circumstances in the case, with a view of showing what connection, if any, they had with the conspiracy, and what were their purposes in joining it.

But is this law?

Aye, marry is't; crowner's quest law.

It is the same fantastic doctrine that was proclaimed in the Guy Fawkes case nearly 300 years ago, where it was held presumptive evidence of guilt that a man was a Roman catholic priest, and father confessor to some of the conspirators. He must, therefore, have been an accessory before the fact, and a party to the gunpowder plot. It was mob law for ages that every Jew was *particeps criminis* in the crucifixion of Christ, as an accessory after the fact.

In like manner the court held that prejudice against communists and socialists would not disqualify a citizen from serving on a jury to try a socialist for murder. Absolutely that is good law; but if the fact that a man is a socialist may be given in evidence against him on a trial for murder, then the prejudice of the juror attaches to the defendant personally, and the juror is not impartial. Says the court:

The socialist or communist, if he attempted to put into operation his *queer* principles of property, would destroy individual rights in property. Practically considered, the idea of taking a man's property from him without his consent for the purpose of putting it into a common fund for the benefit of the community at large involves the commission of theft and robbery.

That strain of moralizing shows the *animus* of the court. It proves that the judges, like the jury, were prejudiced against the defendants, and that the accused men could not have an impartial appeal in the court above, nor a fair trial in the court below. If the defendants had "queer" principles of property, the Supreme Court had "queer" principles of law.

If the rulings of the court in the anarchist case were healthy morals and good law, why was the legislature called upon to cure the judgment by an *ex post facto* act of absolution? If those rulings were legal, why legalize them again by act of the general assembly? Why transport them from the intellectual desert of the Illinois reports to the more fertile region of the statutes? Why was the "conspiracy" law adopted at all, except as an underpinning for the court, while obsequious lawyers were trying to lift the decision up to grade? Statute and decision are alike illegal, hostile to liberty, savage in penalties, and beneath the dignity of the state. Some day the people of Illinois will call upon the hills to fall upon the decision in the anarchist case and upon the mountains to cover the conspiracy law.

A PARALLEL AND CONTRAST.

An opinion is prevalent in Illinois that Parsons was hanged for obstinacy; that he defied the commonwealth, and scorned to beg for his life, therefore the proud state strangled him in its rage. It is claimed that under the law the governor could not reprieve him until he begged for mercy and a commutation of the sentence. This mistake has been petted by the newspapers in order to lighten the guilt of the November tragedy, and transfer the sin of this man's death from the governor to the victim. The excuse is false and ignominious. When the attorneys and friends of Parsons asked for his life, the law was complied with in the letter and the spirit. Whether or not, even if Parsons, madly eager for a martyr's crown, became a party to his own death, the state of Illinois had no right to become a party to it also.

A man may not lawfully commit suicide, neither can he make a present of his life to the state; and should he tender the gift, the commonwealth must not accept it. This is religion; and there is law for it also. Once upon a time a man was to be tried in New York for murder, and through some accident or other only eleven

men were in the jury box. "What matter?" said the prisoner. "Surely eleven men can try the cause as well as twelve." Thereupon an agreement was made between the prisoner and the state's attorney that the case be tried by a jury of eleven men. This agreement was entered on the record and the trial began. The defendant was convicted, and sentenced to death. His counsel appealed the case and assigned for error that he had not been legally convicted, because his jury consisted of less than twelve men. It was exultingly answered by the state's attorney that the prisoner's own consent to be tried by a jury of eleven men was part of the record in the case. The court of appeals replied that the consent was void; that the prisoner had no power to make such a bargain with the state, nor the state with him. The judgment was reversed, although the proof of guilt was clear. The Supreme Court of Illinois would have said that the appellant must show that he was "harmed" by the verdict; but the New York tribunal correctly decided that it was enough to show that the jury was imperfect. The commonwealth of New York was too humane to accept the foolish forfeit of a man's life, and too great to foreclose a mortgage on it, though freely signed and sealed. The defiance uttered by Parsons was delirium. It ought to have been answered by charity, and not by vengeance.

When the vote-mongering season comes, the governor of Illinois, like a mechanical phonograph, articulates a stump speech to an influential "element" denouncing the vindictive punishment by England of political offenders in Ireland. The crowd, amusing him with cheers, regards him as a mere automaton, knowing little of the Irish question, and caring no more about it than any other talking machine. Behold a curious historic parallel and contrast between the government of England and the government of Illinois. In 1848 Mr. William Smith O'Brien, a member of the English parliament, organized an insurrection in Ireland, and actually commanded the insurgent forces in an attack upon the barracks occupied by the police. Although some of the police were killed, the insurgents were defeated. Mr. O'Brien was tried, convicted and sentenced to death. His friends made intercession for him, and begged the government to commute his sentence to imprisonment for life. Mr. O'Brien wrote a letter to the secretary of state repudiating this appeal for clemency. He insisted that it would be

illegal to commute the sentence and that the government had no alternative between hanging and absolute pardon. He positively refused to accept a reprieve, and he scorned the English power. Parsons acted in the same way. The government of Illinois took him at his word and hanged him. The government of England was too magnanimous to take Smith O'Brien at his word. His sentence was commuted in spite of him; he was sent to New South Wales, where he was released on his parole, and in a few years pardoned. The contrast between the two governments in those parallel cases is the humiliation of Illinois, and the shame of the governor. What is said about Parsons here will apply very nearly to Engel, Fischer and Spies; and remember that in the O'Brien case the prisoner deliberately marched his followers to the police station and opened fire upon the police. The police did not march to *him*, as they marched up to the meeting at the Haymarket and commanded it in a hostile manner to disperse.

THE LORD LIEUTENANT AND THE MAYOR.

A comic twinship was that of the governor and the mayor making anti-coercion speeches at Battery "D" last May. Moved by counterfeit anger, they condemned force as an agent of government—in Ireland—but not in Illinois. With deep mock feeling the mayor exclaimed: "Force cannot endure against the liberty-loving instincts of an earnest and united people." In theatrical recitation he condemned what he called the "atrocious bill" for the preservation of "law and order" in Ireland. He did not know it at the time but his denunciations fell more justly and more heavily upon himself than upon Lord Salisbury. He condemned himself as follows:

The act gives the lord lieutenant authority to proclaim any district and suppress any association which he thinks disloyal to the government, and to direct all in such district to be searched, and thus effect a general disarmament of the Irish people. Nor is this all. The bill provides for a special jury, which, in this case, may mean one packed for the government.

In the practice of coercion there is little difference between the lord lieutenant of Ireland and the lord lieutenant of Chicago, as the following arbitrary order will show:

CHICAGO, Ill., Nov. 12, 1887.

Frederick Ebersold, Superintendent of Police :

You will issue a permit worded as follows to the committee whose application is enclosed :

Permission is hereby given to the families and friends of August Spies, A. R. Parsons, Adolph Fischer, George Engel and Louis Lingg, to conduct a funeral Sunday, Nov. 13, between the hours of 12 and 2 o'clock, p. m., on the following conditions:

The bodies are to be taken from the respective homes directly to the place of burial, the families and friends of deceased forming a line on Milwaukee avenue, commencing near Bryson street, and the procession moving on Milwaukee avenue to Desplaines street, Desplaines to Lake street, Lake to Fifth avenue, and Fifth avenue to the depot of the Wisconsin Central Railway company at Polk street.

The carrying or displaying of banners is prohibited, no speeches are to be made and no concealed weapons or arms shall be carried in the procession; nor shall any demonstration of a public character be made except to conduct the funeral in a quiet and orderly manner. The music, if any, to be dirges only.

This permit is issued subject to the statute law of the state of Illinois and the laws and ordinances of the city of Chicago, and the procession will be at all times subject to police regulations.

JOHN A. ROCHE, Mayor.

It might be difficult to prove that this harsh proclamation was in accordance with the statute law of Illinois, and the laws and ordinances of Chicago; but if it was, the fact would only show that the proposed coercion law for Ireland which the mayor so dramatically stigmatised in May, was at that very time the law of the state of Illinois and the city of Chicago. The mayor "proclaimed" certain streets of the city, and he forbade the carrying of banners. He "disarmed" the people and prohibited speeches. Like a French emperor he proscribed certain hymns and songs, which the lord lieutenant of Ireland would hardly dare to do. The mayor of Chicago pretended to be sensitive that the lord lieutenant of Ireland should be empowered to suppress associations which he thought were disloyal to the government, and to direct searches to be made in the proclaimed districts. Has not the mayor of Chicago done those very same things? Has he not suppressed associations? And has he not, through his police, searched houses without any lawful warrant whatever? As for the "special jury" wickedness, what sort of a jury did the anarchists have? Was not that a special jury? And was it not packed for the government?

The mayor showed a great deal of stage grief over the "rackrenting" in Ireland, forgetting that there is more rackrenting done in Chicago in six months than is done in Ireland in six years. Such leases as are every day enforced by scores in Illinois, the British government would not allow to be enforced in Ireland. There are more "rackrenting" evictions every year in Illinois, yes, more of them in the single mayoralty of Chicago, than in the whole kingdom of Ireland, for the same period of time.

THE AFFIDAVIT OF OTIS FAVOR.

Here is the affidavit of Otis Favor, as it was presented to the governor on the 9th day of November, 1887. It remains uncontradicted:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Otis S. Favor, being duly sworn on oath, says that he is a citizen of the United States and of the state of Illinois, residing in Chicago, and a merchant doing business at Nos. 6 and 8 Wabash avenue, in the city of Chicago, in said county. That he is very well acquainted with Henry L. Ryce, of Cook county, Illinois, who acted as a special bailiff in summoning jurors in the case of The People, etc., vs. Spies et al., indictment for murder, tried in the Criminal Court of Cook county in the summer of 1886. That affiant was himself summoned by said Ryce for a juror in said cause, but was challenged and excused therein because of his prejudice. That on several occasions in conversation between affiant and said Ryce touching the summoning of the jurors by said Ryce, and while said Ryce was so acting as special bailiff as aforesaid, said Ryce said to this affiant and to other persons in affiant's presence, in substance and effect as follows, to-wit: "I" (meaning said Ryce) "am managing this case" (meaning this case against Spies et al.), "and know what I am about. Those fellows" (meaning the defendants, Spies, et al.), "are going to be hanged as certain as death. I am calling such men as the defendants will have to challenge peremptorily and waste their time and challenges. Then they will have to take such men as the prosecution wants." That affiant has been very reluctant to make any affidavit in this case, having no sympathy with anarchy nor relationship to or personal interest in the defendants or any of them, and not being a socialist, communist, or anarchist; but affiant has an interest as a citizen in the due administration of the law, and that no injustice should be done under judicial procedure, and believes that jurors should not be selected with reference to their known views or prejudice. Affiant further says that his personal relations with said Ryce were at said time, and for

many years theretofore had been most friendly and even intimate, and that affiant is not prompted by any ill will toward anyone in making this affidavit, but solely by a sense of duty and a conviction of what is due to justice.

Affiant further says that about the beginning of October, 1886, when the motion for a new trial was being argued in said cases before Judge Gary, and when, as he was informed, application was made before Judge Gary for leave to examine affiant in open court touching the matters above stated, this affiant went upon request from State's Attorney Grinnell to his office during the noon recess of the court, and there held an interview with said Grinnell, Mr. Ingham, and said Ryce, in the presence of several other persons, including some police officers, where affiant repeated substantially the matters above stated, and the said Ryce did not deny affiant's statements, and affiant said he would have to testify thereto if summoned as a witness, but had refused to make an affidavit thereto, *and affiant was then and there asked and urged to persist in his refusal and to make no affidavit.* And further affiant saith not.

OTIS S. FAVOR.

Subscribed and sworn to before me this 7th day of November, A. D., 1887. JULIUS STERN,

Notary Public in and for said county.

The significance of the above statement lies in the latter part of it, where after giving his reasons for declining to appear in court during the argument of the motion for a new trial, and his reasons for refusing to make an affidavit at that time, Mr. Favor says that he went to Mr. Grinnell's office at the request of Mr. Grinnell, and was "asked and urged to persist in his refusal, and to make no affidavit." This, in the presence of Mr. Grinnell, Mr. Ingham, his assistant in the prosecution, and Mr. Ryce, the bailiff who summoned the jury. This is evidence that the state's attorney adopted and endorsed the illegal action of the bailiff. It is evidence that the prosecuting attorneys were accessories after the fact to the suspicious making of the jury; and it raises a presumption that they were accessories before the fact also. On weaker testimony men were hanged as accessories to the throwing of the bomb.

FREE SPEECH AND CONSEQUENTIAL MURDER.

The crime of consequential murder constructed out of turbulent rant and political bombast is out of harmony with American law. The genius of it is a vicious and dangerous principle expelled from England many years ago. Let it prevail in America, and liberty of

speech is gone. No man will dare to advocate a change in the law lest a policeman be killed in a riot, and some law-spider spin a thread connecting the riot with the speech. According to the Illinois doctrine, a thousand citizens of Chicago might have been included in the anarchist indictment and all of them found guilty. At the great eight-hour meeting held at Battery D, a few days before the bomb throwing, at which meeting it is claimed 25,000 workingmen were present, the most impassioned and the most inflammable speech was made by a Baptist clergyman of great prominence in the city. No other speech that night excited the multitude to such frenzy as the stimulant administered by that clergyman. Who shall dare to say what influence it had in maddening the savage who threw the bomb? Had this minister been included in the multifarious indictment, he must have been convicted under the rulings of the court. This, although any person who heard him could see that while he aroused the passions of the crowd by eloquent expressions of sympathy, his desire was to direct their minds away from violent plans of change to moral and religious methods of reform.

A free people who elect their own magistrates at stated intervals are exposed to periodical returns of political excitement. In these periods the advocates of change are necessarily violent in their oratory; but their criticisms are not taken literally as menaces to particular men or classes of men, even though fools inflamed by the speeches commit violence. In the last congress, a member of the house of representatives from Chicago denounced a private citizen by name, and advised that he be hanged. A few Sundays ago, a Chicago clergyman, incensed because a parishioner had been shot down in the street, suggested a lamp-post for the assassin. In like manner a Chicago paper, the most irrational in its appeal for vengeance on the anarchists, commenting on a railroad accident which had resulted from carelessness, recommended the summary hanging of the railroad officers. Suppose that the advice of the congressman, the editor and the clergyman had been followed, then under the Illinois doctrine, those men would all be guilty of constructive murder, and liable to the punishment of death. The whole principle is without any sense or moral vitality. It grins on the Supreme bench like the skull of a dead man. In the name of justice let it be taken out and buried.

Shortly before the Haymarket affair, the chaplain of the house

of representatives prayed before congress like an angry prophet, and invoked the vengeance of the Lord upon a people guilty of social inequality and wrong. Like a prophet he seemed to have a vision of the coming 4th of May. It was not Nineveh he was threatening or bewailing, but the United States of America rushing madly into what he called "a reign of terror." He appeared grateful for the newly-discovered agent which was to equalize conditions, and "lighted the fuse" in the following style:

For long the few have mastered the many, because they understood the open secret, the tools to those who can use them; now the many have learned the secret of *organization, drill and dynamite.*

The anarchist prayer was official; it was paid for out of the public treasury and offered up in the capitol. Does that make the congress that heard the prayer and paid for it an anarchist association? If not, why not? Does the prayer itself make the Rev. Mr. Milburn legally or morally responsible for the Haymarket riot? Certainly not, and yet, if he had made the prayer in Chicago he could have been hanged for it. He might have been hanged for it anyhow if Mr. Grinnell had given the matter a thought, for if Spies could be put to death for what he said in Michigan, it was inexcusable carelessness on the part of Mr. Grinnell not to hang Mr. Milburn for what he said at Washington. Not only was Mr. Milburn not hanged for praying in behalf of dynamite, he was actually rewarded for it. He was re-elected to his comfortable office, and is chaplain of the house of representatives to-day.

JEFFERSON AND PARSONS.

Had the Illinois rulings been good law in Jefferson's time, he might have been hanged at any period of his active political career. He was an anarchist; not an amateur speculative anarchist, but a physical force anarchist, and an avowed enemy of government. His biographers have tried to explain away the "no government" theory of Jefferson, but that he cherished and advocated the theory cannot be denied. The following quotation is not from the *Arbeiter Zeitung* nor the *Alarm;* it is from Jefferson's letter excusing the Massachusetts rebellion; not the rebellion against Great Britain, but the rebellion against the United States:

God forbid we should ever be twenty years without such a rebellion. * * * What country can preserve its liberties if its

rulers are not warned from time to time that this people preserve the spirit of resistence? Let them take arms. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time by the blood of patriots and tyrants. It is its natural manure.

Did Fielden, Parsons, or Spies utter anything more sanguinary than that, or anything more anarchical than this:

I am convinced that those societies which live without government enjoy in their general mass an infinitely greater degree of happiness than those who live under the European governments. Among the former, public opinion is in the place of law restraining morals as powerfully as laws ever did anywhere. Societies exist in three forms:

1. Without governments.
2. Under governments wherein every one has a just influence.
3. Under governments of force.

It is a problem not clear in my mind that the first condition is not the best.

The question is not whether those opinions were wise or foolish, wicked or charitable, but had Mr. Jefferson the right to express them? And having expressed them, could he have been hanged because riots followed them in which "the tree of liberty" was "refreshed with the blood" of some policeman, or other agent of the government?

Whether preached by Jefferson or Parsons, faith in the efficacy of blood as a political redeemer in America is a barbarous belief. In a country where every man is armed with the ballot, moral force is the only agent which will ever achieve anything that is worthy to be done. To this the anarchist agitators reply that the ballot is enslaved in the hands of slaves. They say that the working men are under the control of capital; that they are not free to use the ballot; and even if absolutely free they are neither intelligent enough, nor virtuous enough to use the ballot well. If so, is it possible that they can use wisely or beneficently the sword, the musket, or the bomb? In advocating anarchy, Jefferson and Parsons may both have been wrong, but the expression of political opinion was free in Jefferson's time, and it ought to be free now.

As a political expedient the gallows is as barbarous as the bomb, especially when it is made the instrument of retaliation and revenge. The hanging of the anarchists was the most criminal political blunder ever perpetrated in Illinois. When the state

refused to hang Schwab and Fielden it gained an important moral victory over them. When it strangled Spies and Parsons it suffered an ignominious defeat. Government and society are more afraid of Spies and Parsons dead, than of Schwab and Fielden living. It is not wise to suffocate the law and drag the courts down to the level of anarchy. Instead of sending the American constitution to the Pope the president should have sent a copy of it to Springfield, Illinois.

The gallows is not needed in American politics. It is a brutal educator at its best; and the duty of the hour is to educate the people, not the working men alone, but also their employers, their judges, and their governors. The American republic does not fear debate, nor tremble at the vibrations of a song. It is no compliment to a great nation when a little magistrate proscribes "Annie Laurie" or the "Marseillaise." The nobility as well as the mobility must be taught that cruelty and violence are worthless as political or social remedies. Free debate is the American crucible in which all our political theories must be tried and purified. Physical force is not a safe reliance for the rich, nor a competent redress for the poor. The policeman's club is an ugly symbol of our strength. It has its uses, but its moral power is not great. When our peace and our possessions rest on that, and not on popular content, we hold them by a tenure uncertain and precarious. We must restore to Illinois the constitution and the law; and first of all, we must reverse the judgment in the anarchist case, where both were overthrown.

APPENDIX.

Judge Gary's letter to the governor in behalf of Schwab and Fielden :

CHICAGO, Ill., Nov. 8, 1887.

To the Hon. Richard J. Oglesby, Governor, etc.

SIR—On the application of Samuel Fielden for a commutation of his sentence, it is not necessary as to the case itself that I should do more than refer to the decision of the Supreme Court for a history of his crime.

Outside of what is there shown there is in the nature and private character of the man, a natural love of justice, an impatience at all undeserved suffering, an impulsive temper, and an intense love of and thirst for the applause of his hearers made him an advocate of force as a heroic remedy for the hardship that the poor endure. In his own private life he was the honest, industrious and peaceable laboring man.

In what he said in court before sentence he was respectful and decorous. His language and conduct since have been irreproachable. As there is no evidence that he knew of any preparation to do the specific act of throwing the bomb that killed Degan, he does not understand even now that general advice to large masses to do violence makes him responsible for the violence done by reason of that advice, nor that being joined by others in an effort to subvert law and order by force makes him responsible for the acts of those others tending to make that effort effectual.

In short, he was more a misguided enthusiast than a criminal, conscious of the horrible nature and effect of his teachings, and of his responsibility therefor. What shall be done in his case is partly a question of humanity and partly a question of state policy, upon which it seems to me action on the part of your excellency favorable to him is justifiable.

I attach this to a copy of his petition to your excellency, and refer to that for what he says of the change that has come upon himself. Respectfully, yours, etc., JOSEPH E. GARY.

Mr. Grinnell's letter to the governor.

CHICAGO, Ill., Nov. 8, 1887.

Hon. Richard J. Oglesby, Governor, etc.

SIR—While endorsing and approving the foregoing statement and recommendation by Judge Gary, I wish to add thereto the suggestion, upon application of Mr. Foster, one of the attorneys

who appeared for the defendants upon the trial of said cause, that Schwab's conduct during the trial and when addressing the court before sentence, like Fielden's, was decorous, respectful to the law, and commendable. I feel that you should know this fact, which exists alone as to these two—Schwab and Fielden.

It is my further desire to say that I believe that Schwab was the pliant, weak tool of a stronger will and more designing person. Schwab seems to be friendless.

At this date no other application has been made to me, and if made I have no further suggestions or recommendations to offer.

As to the two above named, I do not feel like putting any obstacle in the way of a commutation of their sentence to imprisonment for life, although I should have preferred to have received from Schwab a statement similar in character to that from Fielden, which is a great factor in his favor, in my opinion.

Respectfully yours, etc., JULIUS S. GRINNELL,
State's Attorney.

Judge Tuthill's letter to the governor.

Mr. Ingham, who assisted in the prosecution, added a word of approval, and Judge Tuthill wrote the following:

In view of the above statements of Judges Gary and Grinnell and Mr. Ingham, touching Fielden and Schwab, and as well in consideration of what I myself know of the facts of the case as affecting these two men, I sincerely recommend and hope that executive clemency may be extended to each of these men.

RICHARD S. TUTHILL.

NOTE.—It is important that Judge Tuthill's letter be studied and understood. His appeal is based not alone on the statements of Judges Gary and Grinnell and Mr. Ingham, but also on what he himself knew of "*the facts in the case* as affecting those two men," Schwab and Fielden. It makes one shudder to think how close those two men came to the gallows, without a sign from Judge Tuthill that he knew of any "*facts in the case*" favorable to them. He kept silent until within three days of the time appointed for their execution. His testimony came late, but it will ever be a comfort to Judge Tuthill and his children, that it came at last, and helped to arrest the illegal sentence against Fielden and Schwab. It would have been a greater comfort still had he expanded his plea for mercy so far as to include all the men condemned, even though he may not have known any facts favorable to any of them except Fielden and Schwab. M. M. T.

BIOGRAPHICAL.

As the author of this pamphlet has attained a good deal of popularity and unpopularity by his criticisms of the anarchist trial, and his efforts to obtain a mitigation of the sentence passed upon the unfortunate men, the following sketch of him is presented here.

Gen. M. M. Trumbull is an Englishman, born in London. He is 61 years of age, and a lawyer by profession. At the age of 20 he came to the United States, and served with the American army during the war with Mexico. After the war he resided in Virginia, but being strongly opposed to slavery his position in Virginia was not comfortable, so he left that state in 1853 and settled in Iowa. He engaged in the practice of the law, and was a very active republican in politics. He was a member of the first Iowa legislature that met at Des Moines, in January, 1858. In this legislature were several men who afterwards became prominent in our national affairs: Belknap and McCrary, both from the same county, each of whom was afterwards secretary of war. Kirkwood, afterwards governor, United States senator and member of Garfield's cabinet. Carpenter, governor and member of congress. Wilson, present United States senator; and many others of distinction in politics and war.

Gen. Trumbull was one of the first volunteers from Iowa at the outbreak of the war and was appointed captain of Company I, 3d Iowa Infantry. In August, 1862, he was promoted lieutenant colonel of the regiment, and in November of that year he was discharged for disability arising from injuries received in battle. On his recovery he was appointed colonel of the 9th Iowa Cavalry, and afterwards brigadier general. He was mustered out in February, 1866.

In the fall of 1866 Gen. Trumbull was elected district attorney of the 9th judicial district of Iowa, comprising the counties of Dubuque, Delaware, Buchanan, Blackhawk and Grundy. He served for about three years and then resigned to accept the appointment of collector of internal revenue for the 3d congressional district of Iowa. This office was tendered him by President Grant, without any solicitation whatever on the part of Gen. Trumbull. Having held the office of collector for eight years, he resigned and visited his home in England, which he had not seen for more than thirty years. For the past six years he has resided in Chicago.

Gen. Trumbull's writings in the English and American magazines have attracted a good deal of attention, especially those on economic and social questions. Although a very active republican, Gen. Trumbull is an ardent free-trader, and his "History of the Free Trade Struggle in England" has had very great popularity. His article on "American Aristocracy" published in *The Nineteenth Century* was very much discussed in England, and also in the United States.

Gen. Trumbull has always been a strong opponent of the methods and principles of the people known as anarchists, and especially of their theory of reform by physical violence. On this question he has had many public and private controversies with Fielden, Spies and Parsons. His doctrine is that no change for the better is possible except through moral forces. He is a strenuous advocate of "Law and Order," and he holds that the rich as well as the poor should be compelled to respect the constitution and the law. He maintains that all the people, from the highest to the lowest in rank, wealth or station, shall be equally under the protection and correction of the law. He believes that judges and magistrates who violate the law, especially in their official capacity, are more guilty than delinquents of inferior degree.

KF
223
S5
T72
1888
PARE
BK R